



3 1761 116302910



Digitized by the Internet Archive
in 2023 with funding from
University of Toronto

<https://archive.org/details/31761116302910>

CA20NLR
∅54

Government
Publications

Ontario Labour relations board
Report
1969, Jan - June

775 R

Government
Publication

JANUARY 1969



ONTARIO

Monthly Report

ONTARIO LABOUR RELATIONS BOARD

CASE LISTINGS JANUARY 1969

PAGE

1.	CERTIFICATION	
	(A) BARGAINING AGENTS CERTIFIED	977
	(B) APPLICATIONS DISMISSED	986
	(C) APPLICATIONS WITHDRAWN	991
2.	APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS	992
3.	APPLICATION FOR DECLARATION OF SUCCESSOR STATUS	995
4.	APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL	996
5.	APPLICATION FOR DECLARATION THAT LOCK-OUT UNLAWFUL	997
6.	APPLICATIONS FOR CONSENT TO PROSECUTE	997
7.	COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE)	1000
8.	APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT	1001
9.	APPLICATION UNDER SECTION 47A	1001
10.	APPLICATION UNDER SECTION 63 (FINANCIAL STATEMENT)	1001
11.	APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2)	1001
12.	JURISDICTIONAL DISPUTES	1002
13.	APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION	1002
14.	INDEXED ENDORSEMENTS	
	CERTIFICATION	
	14428-68-R: PRE-CON MURRAY LIMITED	1003
	14820-68-R: IMPERIAL OPTICAL COMPANY LIMITED	1010
	14899-68-R: THE CORPORATION OF THE CITY OF OWEN SOUND	1012
	15019-68-R: AFFILIATED MEDICAL PRODUCTS LIMITED	1014
	15292-68-R: WATERLOO COUNTY HEALTH UNIT	1016
	15362-68-R: THE GREAT ATLANTIC & PACIFIC TEA COMPANY, LIMITED	1017
	15405-68-R: WITTICH'S BREAD LIMITED	1019
	15440-68-R: THE SARNIA BOARD OF EDUCATION	1025
	15467-68-R: MANOR CARPENTERS	1026
	15476-68-R: NORAK STEEL	1028
	15481-68-R: RIVERSIDE POULTRY Co. LTD.	1030
	15556-68-R: EVOY-MCLEAN LIMITED	1031

TERMINATION		
15414-68-R:	BLH-BERTRAM LIMITED	1032
15415-68-R:	BLH-BERTRAM LIMITED	1035
15510-68-R:	RETAIL CLERKS INTERNATIONAL ASSOCIATION	1038
15511-68-R:	SENTRY DEPARTMENT STORES LIMITED (OPERATING UNDER THE NAME G.E.M. STORES (1965)	1039
SUCCESSOR STATUS		
15280-68-R:	BATHE & MCLELLAN CONST. LTD., AND OTHER CONTRACTORS HAVING AGREEMENTS WITH LOCAL 397 WHITBY, LOCAL 1450 PETERBOROUGH AND LOCAL 1071 COBOURG OF THE UNITED BROTHER- HOOD OF CARPENTERS AND JOINERS OF AMERICA	1041
STRIKE UNLAWFUL		
15482-68-U:	THE FOUNDATION COMPANY OF CANADA LIMITED, AND A.D. ROSS & COMPANY LIMITED	1044
15483-68-U:	THE FOUNDATION COMPANY OF CANADA LIMITED, AND A.D. ROSS & COMPANY LIMITED	1046
PROSECUTION		
15000-68-U:	FRASER-BRACE ENGINEERING COMPANY LIMITED	1046
15370-68-U:	SCARBOROUGH CENTENARY HOSPITAL	1049
15484-68-U:	THE FOUNDATION COMPANY OF CANADA LIMITED AND, A.D. ROSS & COMPANY LIMITED	1056
15485-68-U:	THE FOUNDATION COMPANY OF CANADA LIMITED AND, A. D. ROSS & COMPANY LIMITED	1057
SECTION 65		
15271-68-U:	DUNWICH-DUTTON PUBLIC SCHOOL BOARD	1059
15284-68-U:	L. & W DISTRIBUTORS LTD., CARRYING ON BUSINESS AS N & D SUPERMARKET	1064
15375-68-U:	FEDERAL BOLT & NUT CORPORATION LIMITED	1067
15381-68-U:	R. REININGER & SONS LTD.	1069
15558-68-U:	THE FOUNDATION COMPANY OF CANADA LIMITED AND A. D. ROSS AND COMPANY LIMITED	1070
15583-68-U:	J. F. O'NEILL	1072
SECTION 39(3)		
15431-68-M:	UNITED FORMING LIMITED	1073
SECTION 47A		
15281-68-M:	CANADIAN TRAILMOBILE LIMITED; BRANTFORD TRAILER & BODY LIMITED; INTERNATIONAL MOLDERS AND ALLIED WORKERS' UNION THROUGH ITS LOCAL 28	1077

	PAGE
SECTION 63 15445-68-M: LOCAL 63 - C.U.P.E. CARETAKERS	1082
SECTION 79(2) 15335-68-M: DOBBIE INDUSTRIES LIMITED	1083
15342-68-M: GOODYEAR TIRE AND RUBBER COMPANY OF CANADA LIMITED, BOWMANVILLE, ONTARIO	1084
15486-68-M: BRAMPTON TRANSPORT LIMITED	1085
JURISDICTIONAL DISPUTES	
14743(A)-68-JD: FRASER-BRACE ENGINEERING COMPANY, LIMITED	1087
14920(A)-68-JD: BEER PRECAST CONCRETE LIMITED	1108
15406(A)-68-JD: TORONTO FORMING (1965) LIMITED AND WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 562	1115
15507(A)-68-JD: WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 562 AND VERO FORMS LIMITED	1118
15515(A)-68-JD: WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 562 AND RELLI FORMS LIMITED	1119
15524(A)-68-JD: WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 562 AND FORMING CONSTRUCTION LIMITED	1120
15. EXCERPTS FROM DECISIONS IN CONSTRUCTION INDUSTRY CASES	1122

STATISTICAL TABLES FOR JANUARY 1969

TABLE		
I.	APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD	1124
II.	HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD	1124
III.	APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY MAJOR TYPES	1125
IV.	APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY TYPE AND DISPOSITION	1126
V.	REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD	1128
VI.	REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD	1128

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING JANUARY 1969

BARGAINING AGENTS CERTIFIED DURING JANUARY

NO VOTE CONDUCTED

14899-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE CORPORATION OF THE CITY OF OWEN SOUND (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT THE CITY HALL, IN OWEN SOUND, SAVE AND EXCEPT CITY CLERK, DEPUTY CITY CLERK, CITY TREASURER, ASSISTANT CITY TREASURER, ASSESSMENT COMMISSIONER, DEPUTY ASSESSMENT COMMISSIONER, CITY ENGINEER, SUPERINTENDENT OF WORKS, CITY MANAGER, SECRETARY TO CITY MANAGER, PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE PARTIES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (25 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 1012).

15019-68-R: TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO (APPLICANT) v. AFFILIATED MEDICAL PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT AJAX, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF." (94 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 1014).

15180-68-R: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) v. TAYLOR INSTRUMENT COMPANIES OF CANADA LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT 75 TYCOS DRIVE IN THE BOROUGH OF NORTH YORK, SAVE AND EXCEPT SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR AND FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (51 EMPLOYEES IN THE UNIT).

15307-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) v. NATION-WIDE INTERIOR MAINTENANCE COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT POST OFFICE STATION "A" ON BESSERER STREET AT OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (8 EMPLOYEES IN THE UNIT).

15362-68-R: BAKERY AND CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264 (APPLICANT) V. THE GREAT ATLANTIC & PACIFIC TEA COMPANY, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS NATIONAL PRODUCE DIVISION AT METROPOLITAN TORONTO, SAVE AND EXCEPT ASSISTANT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANKS OF ASSISTANT FOREMAN AND FORELADY, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (40 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 1017).

15405-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL-CIO: CLC (APPLICANT) V. WITTICH'S BREAD LIMITED (RESPONDENT).

UNIT: "ALL DRIVER-SALESMEN OF THE RESPONDENT EMPLOYED AT AYTON IN THE COUNTY OF GREY, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER." (14 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 1019).

15429-68-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 204, AFL-CIO-CLC (APPLICANT) V. DOMINION WINDOW & FLOOR SERVICE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK WHO ARE EMPLOYED BY THE RESPONDENT AT ONTARIO PAPER COMPANY AT THOROLD, PROVINCIAL PAPER COMPANY AT THOROLD, KIMBERLY-CLARK COMPANY AT THOROLD, BREWER'S RETAIL (MAIN OFFICE) AT ST. CATHARINES AND ANTHES IMPERIAL AT ST. CATHARINES, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (18 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES WITH RESPECT TO THE VARIOUS LOCATIONS AND IN THE SPECIAL CIRCUMSTANCES OF THIS CASE).

15439-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. C. E. MACPHERSON (1968) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KINGSTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (33 EMPLOYEES IN THE UNIT).

15456-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. TORONTO CHROMIUM PLATING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (54 EMPLOYEES IN THE UNIT).

15458-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) v. SOTRAMONT INC. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

15460-68-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) v. FRANKEL STRUCTURAL STEEL LIMITED (RESPONDENT) v. SHOPMEN'S LOCAL UNION No. 743 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (AFFILIATED WITH THE AFL-CIO, C.L.C. (INTERVENER)).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT IN ITS BOILER ROOM AT ITS PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (2 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

15464-68-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) v. BUCHLER BROTHERS LIMITED (RESPONDENT).

UNIT: "ALL MEAT DEPARTMENT EMPLOYEES OF THE RESPONDENT AT ITS STORES IN ST. CATHARINES, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (4 EMPLOYEES IN THE UNIT).

15465-68-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC. (APPLICANT) v. BUEHLER BROTHERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS STORES AT ST. CATHARINES, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF, MEAT DEPARTMENT EMPLOYEES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (5 EMPLOYEES IN THE UNIT).

15466-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. INDAL PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS TRAILWIND PRODUCTS DIVISION IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (29 EMPLOYEES IN THE UNIT).

15467-68-R: THE CANADIAN UNION OF CONSTRUCTION WORKERS (APPLICANT) v. MANOR CARPENTERS (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 1026).

15472-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. HALL LAMP COMPANY OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF STEPHEN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (70 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

15478-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. ELGIN-ST. THOMAS HEALTH UNIT (RESPONDENT) v. NURSES' ASSOCIATION ELGIN-ST. THOMAS HEALTH UNIT (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT THE CHIEF PUBLIC HEALTH INSPECTOR, PERSONS ABOVE THE RANK OF CHIEF PUBLIC HEALTH INSPECTOR, REGISTERED AND GRADUATE NURSES, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (9 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THAT THE PARTIES AGREE THAT THERE ARE NINE PERSONS IN THE BARGAINING UNIT AND THAT THE BUILDING CUSTODIAN IS NOT INCLUDED AMONG THOSE NINE EMPLOYEES.

15479-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. MIDDLESEX COUNTY HEALTH UNIT (RESPONDENT) v. NURSES' ASSOCIATION MIDDLESEX COUNTY HEALTH UNIT (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT SAVE AND EXCEPT THE CHIEF PUBLIC HEALTH INSPECTOR, PERSONS ABOVE THE RANK OF CHIEF PUBLIC HEALTH INSPECTOR AND REGISTERED AND GRADUATE NURSES." (5 EMPLOYEES IN THE UNIT).

15490-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) v. ALGOMA DRYWALL & ACOUSTICS LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

15492-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) v. FORMCO INC. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

15493-68-R: THE OTTAWA PUBLIC SCHOOL BOARD EMPLOYEES (APPLICANT) v. THE CITY OF OTTAWA PUBLIC SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (219 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THOSE PERSONS CLASSIFIED BY THE RESPONDENT AS STOCKKEEPERS AND CLERK OF SUPPLIES ARE NOT INCLUDED IN THE BARGAINING UNIT DESCRIBED ABOVE.

15497-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) v. DUNLOP CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS CHEMLINE SERVICES DIVISION IN THE TOWNSHIP OF STEPHEN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (18 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15498-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. RULIFF GRASS CONSTRUCTION CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF LAMBERT ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

15499-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) v. MARBEAU ENTERPRISES LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

15502-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. THE CEMENTATION COMPANY (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT THE SHEBANDOWAN MINE PROJECT OF THE INTERNATIONAL NICKEL COMPANY OF CANADA LIMITED, SAVE AND EXCEPT FOREMEN AND LEADERS, PERSONS ABOVE THE RANK OF FOREMAN AND LEADER, OFFICE AND SALES STAFF." (37 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15508-68-R: UNION OF CANADIAN RETAIL EMPLOYEES (APPLICANT) v. SUPER CITY DISCOUNT FOODS LIMITED (RESPONDENT).

UNIT: "ALL PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD IN THE EMPLOY OF THE RESPONDENT IN SAULT STE. MARIE, SAVE AND EXCEPT STORE MANAGERS AND PERSONS ABOVE THE RANK OF STORE MANAGER." (63 EMPLOYEES IN THE UNIT).

15514-68-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) v. TECHNICAL PRODUCTS (CORNWALL) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CORNWALL, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (15 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE EMPLOYEE ENGAGED IN RESEARCH, DEVELOPMENT AND QUALITY CONTROL IS NOT INCLUDED IN THE BARGAINING UNIT.

15517-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. D. LEBLANC INC. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

15528-68-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION 141 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. HY-CRETE PUMPING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (2 EMPLOYEES IN THE UNIT).

15533-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 249 (APPLICANT) v. E. S. MARTIN CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, AND FRONT OF LEEDS AND LANSDOWNE IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

15535-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 597 (APPLICANT) v. CAMSTON LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH, VICTORIA AND THE PROVISIONAL COUNTY OF HALIBURTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

15537-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) v. MOIR CONSTRUCTION COMPANY LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

15541-68-R: BRICKLAYERS, MASONS AND PLASTERERS' INTERNATIONAL UNION OF AMERICA, LOCAL #10 (APPLICANT) v. HERB TAYLOR CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

15542-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) v. EAGLE MACHINE COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE, SALES AND SERVICE STAFF." (56 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15548-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION 247 (APPLICANT) v. E. S. MARTIN CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

15550-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1450 (APPLICANT) v. CAMSTON LIMITED, GENERAL CONTRACTORS (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH, VICTORIA AND THE PROVISIONAL COUNTY OF HALIBURTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

15551-68-R: UNION OF CANADIAN RETAIL EMPLOYEES (APPLICANT) v. SUPER CITY DISCOUNT FOODS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD IN ITS STORES IN METROPOLITAN TORONTO AND THE TOWN

OF MISSISSAUGA, SAVE AND EXCEPT STORE MANAGERS, PERSONS ABOVE THE RANK OF STORE MANAGER, AND EMPLOYEES COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (204 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15570-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 249 (APPLICANT) v. VALLEYFIELD CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

15574-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. W. D. LAFLAMME ENTREPRENEUR (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURDOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

15586-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) v. STEINBERG'S LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

15171-68-R: INTERNATIONAL BROTHERHOOD OF PULP SULPHITE AND PAPER MILL WORKERS (APPLICANT) v. REXWOOD PRODUCTS LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF BUCKE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (112 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	108
NUMBER OF PERSONS WHO CAST BALLOTS	108
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	64
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	44

15273-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. WESTERN IRON & METAL COMPANY (FORT WILLIAM) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT FORT WILLIAM, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (19 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	16
NUMBER OF PERSONS WHO CAST BALLOTS	16
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	13
NUMBER OF BALLOTS MARKED IN FAVOUR OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA LOCAL 990	3

APPLICATIONS FOR CERTIFICATION DISMISSED DURING JANUARY

No Vote Conducted

14428-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 765 (APPLICANT) v. PRE-CON MURRAY LIMITED (RESPONDENT) v. LOCAL NO. 7, OTTAWA, ONTARIO, BRICKLAYERS, MASONS AND PLASTERERS I.U. OF A. (INTERVENOR #1) v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (INTERVENOR #2). (8 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 1003).

14820-68-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE U.S.A. & CANADA (APPLICANT) v. IMPERIAL OPTICAL COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS LENS PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (229 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 1010).

15292-68-R: THE ASSOCIATION OF PUBLIC HEALTH INSPECTORS WATERLOO COUNTY HEALTH UNIT (APPLICANT) v. WATERLOO COUNTY HEALTH UNIT (RESPONDENT). (7 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 1016).

15433-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) v. CONIN CONSTRUCTION LIMITED (RESPONDENT). (NO EMPLOYEES).

15438-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO: CLC (APPLICANT) v. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY, LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS GROCERY DIVISION WAREHOUSE AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (183 EMPLOYEES IN THE UNIT).

15440-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE SARNIA BOARD OF EDUCATION (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS). (62 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 1025).

15451-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE PETROLIA PUBLIC SCHOOL BOARD (RESPONDENT). (5 EMPLOYEES).

15452-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE PUBLIC SCHOOL BOARD OF THE TOWNSHIP SCHOOL AREA OF THE TOWNSHIP OF SARNIA (RESPONDENT). (14 EMPLOYEES).

15453-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. PETROLIA DISTRICT HIGH SCHOOL BOARD (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS). (13 EMPLOYEES).

15454-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE TOWNSHIP SCHOOL AREA OF MOORE BOARD (RESPONDENT). (14 EMPLOYEES).

15455-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. NORTH LAMBTON DISTRICT HIGH SCHOOL BOARD (RESPONDENT). (9 EMPLOYEES).

15457-68-R: THE EDUCATIONAL SECRETARIES' ASSOCIATION (APPLICANT) v. THE BOARD OF EDUCATION FOR THE CITY OF WOODSTOCK (RESPONDENT). (26 EMPLOYEES).

15476-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) v. NORAK STEEL (RESPONDENT). (9 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 1028).

15481-68-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) v. RIVERSIDE POULTRY CO. LTD. (RESPONDENT). v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (INTERVENER). (4 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 1030).

15556-68-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1687 (APPLICANT) v. EVOY-MCLEAN LIMITED (RESPONDENT). (7 EMPLOYEES)

(SEE INDEXED ENDORSEMENT PAGE 1031).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE - HEARING VOTE

15387-68-R: CANADIAN TEXTILE COUNCIL (APPLICANT) v. HARDING CARPETS LIMITED (RESPONDENT) v. TEXTILE WORKERS' UNION OF AMERICA, SOUTHWESTERN ONTARIO TEXTILE JOINT BOARD, AND ITS LOCAL NUMBER 741 (INTERVENER #1) v. THE CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 104 (INTERVENER #2).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT ITS GUELPH PLANTS, SAVE AND EXCEPT FOREMEN, ASSISTANT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN AND ASSISTANT FOREMAN, OFFICE STAFF, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND INTERVENER #2 AND OTHERS MUTUALLY AGREED UPON BY THE RESPONDENT AND INTERVENER #1." (159 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	143
NUMBER OF PERSONS WHO CAST BALLOTS	142
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	64
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER #1	77

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

14403-68-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, B.S.E.I.U., A.F.L. - C.I.O. - C.L.C. (APPLICANT) v. THE BOARD OF GOVERNORS OF THE UNIVERSITY OF WESTERN ONTARIO (RESPONDENT) v. THE CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS LONDON CAMPUS IN THE MAINTENANCE AND SERVICE OF BUILDINGS AND GROUNDS AND IN THE PROVISION OF FOOD SERVICES, SAVE AND EXCEPT FOREMEN, FOREWOMEN, SUPERVISORS AND PERSONS ABOVE THE RANK OF FOREMAN, FOREWOMAN AND SUPERVISOR, STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS, HEAD CHEF, HEAD BAKER, GRADUATE DIETITIANS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND STUDENTS ENROLLED IN THE UNIVERSITY AND SECURITY GUARDS." (429 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	329
NUMBER OF PERSONS WHO CAST BALLOTS	319
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	107
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	211

14851-68-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) v. HART CHEMICAL LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS." (24 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	22
NUMBER OF PERSONS WHO CAST BALLOTS	21
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	11
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	10

14902-68-R: RETAIL CLERKS UNION LOCAL 409 CHARTERED BY RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) v. BUSET'S GROCERY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT FORT WILLIAM, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (13 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	13
NUMBER OF PERSONS WHO CAST BALLOTS	13
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	1
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	11

14919-68-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. JOHNSON CARTAGE SUDBURY LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THEIR SCHOOL VACATION PERIOD." (17 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	14
NUMBER OF PERSONS WHO CAST BALLOTS	14
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	14

15237-68-R: LOCAL UNION 773 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) v. WALLACEBURG HYDRO ELECTRIC COMMISSION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WALLACEBURG, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (12 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	12
---	----

NUMBER OF PERSONS WHO CAST BALLOTS	12
BALLOTS SEGREGATED AND NOT COUNTED	1
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	4
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	6

15332-68-R: BOOT AND SHOE WORKERS' UNION, CLC-AFL-CIO (APPLICANT) v.
JUNIOR FOOTWEAR LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

- AND -

15334-68-R: BOOT AND SHOE WORKERS' UNION, CLC-AFL-CIO (APPLICANT) v.
JUNIOR FOOTWEAR LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MARKDALE AND OWEN SOUND,
SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF
FOREMAN AND FORELADY, OFFICE AND SALES STAFF, AND PERSONS REGULARLY
EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (110 EMPLOYEES IN
THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	140
NUMBER OF PERSONS WHO CAST BALLOTS	139
NUMBER OF SPOILED BALLOTS	2
NUMBER OF SEGREGATED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	58
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	78

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING JANUARY

15386-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL-CIO:
CLC (APPLICANT) v. FRIEDMAN'S DEPARTMENT STORES LIMITED (RESPONDENT)
v. GROUP OF EMPLOYEES (OBJECTORS). (NO EMPLOYEES).

15471-68-R: OPTICAL AND PLASTIC TECHNICIANS AND ALLIED WORKERS UNION
LOCAL 67 - U.H.C.&M.W.I.U. - C.L.C. (APPLICANT) v. IMPERIAL OPTICAL
COMPANY LIMITED (RESPONDENT) v. THE DOLL & TOY WORKERS OF THE UNITED
STATES AND CANADA (INTERVENER). (207 EMPLOYEES).

15480-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v.
CORPORATION OF THE COUNTY OF MIDDLESEX (RESPONDENT). (14 EMPLOYEES).

15491-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. FOREST
PUBLIC SCHOOL BOARD (RESPONDENT). (4 EMPLOYEES).

15503-68-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE BOARD OF EDUCATION FOR THE TOWN OF BURLINGTON (RESPONDENT). (66 EMPLOYEES).

15518-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. DOMINION BUILDING MATERIALS LIMITED (RESPONDENT). (5 EMPLOYEES).

15520-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. MANSONVILLE PLASTICS LTD. (RESPONDENT). (12 EMPLOYEES).

15536-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. CHARLES HUFFMAN LTD. (RESPONDENT). (4 EMPLOYEES).

15538-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. UNITED JEWISH WELFARE FUND (RESPONDENT). (11 EMPLOYEES).

15559-68-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. HANRAHAN'S TAVERN (RESPONDENT). (8 EMPLOYEES).

15566-68-R: INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS (APPLICANT) V. BLACKWELL MANUFACTURING LIMITED (RESPONDENT). (9 EMPLOYEES).

15568-68-R: INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS (APPLICANT) V. MARATHON EQUIPMENT SUPPLY CO. LTD. (RESPONDENT). (10 EMPLOYEES).

15571-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1081 (APPLICANT) V. ANGELSTONE LIMITED (RESPONDENT). (90 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED
OF DURING JANUARY

15115-68-R: GEORGE MAHARAS (APPLICANT) V. HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, RESTAURANT, CAFETERIA AND TAVERN EMPLOYEES UNION, LOCAL 254 (RESPONDENT) V. DIANA SWEETS LIMITED (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF THE COMPANY AT THE COMPANY'S RESTAURANT AT 187 YONGE STREET, TORONTO, ONTARIO, SAVE AND EXCEPT HEAD CHEF, HEAD BAKER, ASSISTANT MANAGERS, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (49 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	46
NUMBER OF PERSONS WHO CAST BALLOTS	46
NUMBER OF SPOILED BALLOTS	3
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	15
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	28

15138-68-R: JOHN KOINIS (APPLICANT) v. RESTAURANT, CAFETERIA AND TAVERN EMPLOYEES UNION, LOCAL 254 (RESPONDENT) v. DIANA SWEETS LIMITED (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF DIANA SWEETS LIMITED, STORE 68 AT THE DON MILLS SHOPPING CENTRE IN METROPOLITAN TORONTO, SAVE AND EXCEPT HEAD CHEF, HEAD BAKER, ASSISTANT MANAGERS, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (21 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	22
NUMBER OF PERSONS WHO CAST BALLOTS	22
NUMBER OF SPOILED BALLOTS	3
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	6
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	13

15330-68-R: EMPLOYEES OF QUEEN CITY GLASS TOR. LTD. (APPLICANTS) v. LOCAL 424 INTERNATIONAL CHEMICAL WORKERS UNION (RESPONDENT) v. QUEEN CITY GLASS (TORONTO) LIMITED (EMPLOYER). (GRANTED).

UNIT: "ALL INSIDE EMPLOYEES OF QUEEN CITY GLASS (TORONTO) LIMITED AT TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CAFETERIA ATTENDANTS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, SECURITY GUARDS, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN QUEEN CITY GLASS (TORONTO) LIMITED AND GLAZIERS LOCAL UNION 1819 OF THE BROTHERHOOD OF PAINTERS, DECORATORS & PAPERHANGERS OF AMERICA." (11 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	11
NUMBER OF PERSONS WHO CAST BALLOTS	11
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	0
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	11

15401-68-R: JAMES E. RUSSELL (APPLICANT) v. INTERNATIONAL WOODWORKERS OF AMERICA (RESPONDENT) v. THOMPSON-HEYLAND LUMBER LIMITED (EMPLOYER). (GRANTED).

UNIT: "ALL EMPLOYEES OF THOMPSON-HEYLAND LUMBER LIMITED AT BURKS FALLS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (57 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	53
NUMBER OF PERSONS WHO CAST BALLOTS	52
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	9
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	43

15414-68-R: BLH-BERTRAM LIMITED (APPLICANT) v. THE INTERNATIONAL MOLDERS' & ALLIED WORKERS' UNION (RESPONDENT) (NO EMPLOYEES). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1032).

15415-68-R: BLH-BERTRAM LIMITED (APPLICANT) v. THE PATTERN MAKERS' ASSOCIATION OF HAMILTON AND VICINITY (RESPONDENT). (NO EMPLOYEES). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1035).

15427-68-R: GORDON BENN (APPLICANT) v. WAREHOUSEMEN AND MISCELLANEOUS DRIVERS LOCAL UNION 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT) v. DALTON CARTAGE CO. LIMITED (INTERVENER). (DISMISSED).

UNIT: "ALL EMPLOYEES OF THE INTERVENER IN METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR (24) HOURS PER WEEK AND STUDENTS HIRED FOR THE SCHOOL VACATION PERIOD." (9 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	8
NUMBER OF PERSONS WHO CAST BALLOTS	7
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	6
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	1

15505-68-R: RON McMURDE (APPLICANT) v. INTERNATIONAL UNION OF DISTRICT 50 UNITED MINE WORKERS OF AMERICA LOCAL 14913 (RESPONDENT) v. CANADIAN WESTINGHOUSE COMPANY LIMITED (INTERVENER). (53 EMPLOYEES). (WITHDRAWN)

15513-68-R: UNITED SLIPPER AND SHOE COMPANY (APPLICANT) v. THE BOOT AND SHOE WORKERS UNION, LOCAL 233 (RESPONDENT). (NO EMPLOYEES) (GRANTED).

(RE: UNITED SLIPPER AND SHOE COMPANY, TORONTO).

APPLICATION FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

JANUARY

15280-68-R: LAKE ONTARIO DISTRICT COUNCIL OF CARPENTERS (APPLICANT)
V. ALL CONTRACTORS WHO HAVE AGREEMENTS WITH LOCAL 397 WHITBY, LOCAL
1450 PETERBOROUGH AND LOCAL 1071 COBOURG OF THE UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA. AS FOLLOWS:

BATHE & MCLELLAN CONST. LTD.
H. M. BROOKS LTD.
CHEMONG CONSTRUCTION LTD.
DALE PLASTERING LTD.
DROGE CONSTRUCTION LTD.
GAY CO. LTD.
GOULDING BROS. LTD.
KONVEY CONSTRUCTION LTD.
LYNVIEW CONSTRUCTION LTD.
MEL-RON CONSTRUCTION.
MILBURN LATH. PLASTER & ACOUSTICS LTD.
VANHOOF CONST. (WHITBY) LTD.
WILLIAM D. WINTER LTD.
UNION-CITY CONST. LTD.
SANDON CONST. LTD.
PIGOTT CONSTRUCTION CO. LTD.
PLORINS & PEDE
JACKSON-LEWIS COMPANY LTD.
JOHN WHEELWRIGHT
E.G.M. CAPE & COMPANY LTD.
ELCO CONSTRUCTION (1967) LTD.
DINEEN CONSTRUCTION LTD.
H.J. GASCOIGNE LTD.
ELLIS-DON LTD.

OVERALL DESIGN

PERWIN CONSTRUCTION CO. LTD.
SKOPIT CONTRACTORS (TORONTO) LTD.
POLARIS STEEL LTD.
ROXSON CONTRACTORS LTD.
MITCHELL CONSTRUCTION CO. (CANADA)

CAMERON - MCINDOO LTD.

BEGG & DAIGLE LTD.

STRUCTURAL FORMWORK

ADAM CLARK COMPANY LTD.

CHARLES HUFFMAN LTD.

MOLLENHAUER CONTRACTING COMPANY

HUGH MURRAY LTD.

BALL BROS. LTD.

FRANKEL FORMWORK CO.

ARDEVAN CONSTRUCTION LTD.

HARBRIDGE & CROSS

E. S. MARTIN CONSTRUCTION LTD.

DICKIE CONSTRUCTION COMPANY LTD.

FRANKI CANADA LTD.

EASTWOOD CONSTRUCTION CO. LTD.
SAPPHIRE DEVELOPMENTS LTD.
INDUSTRIAL CONCRETE FORMING
H. A. RUSSELL & SEDORE LTD.
OLYMPIA & YORK
W. A. STEPHENSON CONSTRUCTION COMPANY LTD.
CODECO LTD.
THE FOUNDATION COMPANY OF CANADA LTD.
EASTERN CONSTRUCTION COMPANY LTD.
FINLEY W. McLACHLAN LTD.
THOMAS J. FULLER CONSTRUCTION CO. (1958) LTD.
M. SULLIVAN & SON LTD. GENERAL CONTRACTORS.
MORTLOCK CONSTRUCTION (1963) LTD.
CONCRETE COLUMN CLAMPS (1961) LTD.
CARTER CONSTRUCTION CO. LTD.
VARAMAЕ CONSTRUCTION LTD.
IMPERIAL MILLWORK INSTALLATIONS
LESLIE GEORGE CONSTRUCTION LTD.
LYNVIEW CONSTRUCTION CO. LTD.
RIDEAU VALLEY CONSTRUCTORS LTD.
P. R. CONNOLLY CONSTRUCTION LTD.
PAUL CARRUTHERS CONST. LTD.
DEMMER CONSTRUCTION LTD.
MILNE & NICHOLS LTD. GEN. CONTRACTORS.
MOIRE RIVER CONST. LTD.
RULIFF GRASS CONSTRUCTION
R. REUSSE CONST. CO. LTD.
SMID CONSTRUCTION
TOPE CONST. CO. LTD.
VANBOTS CONST. CO.
KAMRUS CONST. LTD.
HURLEY-GREGORIS LTD. (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1041).

15506-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
LOCAL # 2557, (INDUSTRIAL) (APPLICANT) v. CANADA WOOD SPECIALTY
COMPANY LIMITED (RESPONDENT). v. ORILLIA GENERAL WORKERS UNION, LOCAL
#141, CANADIAN LABOUR CONGRESS (PREDECESSOR TRADE UNION) (GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

JANUARY

15482-68-U: THE FOUNDATION COMPANY OF CANADA LIMITED AND A. D. ROSS
& COMPANY LIMITED (APPLICANTS) v.

P. BOXMA	C.O. GUINDON	T. G. LOVE
S.E. BEAUCHAMP	G. HALL	A. NEVAN
L. BEDARD	R. HOULE	A. PARADIS

E. BARBEAU	R. JOHNSTON	G. PLAYFORD
P.L. ADAM	A. KERR	A. RAYMOND
L.J. BEAUSOLEIL	C. LAFERRIERE	G. ROBERTSON
R. BLEAU	P. LAJEUNESSE	G. ROSSI
N.A. BOULARD	J. LALONDE	W. ROQUE
C. BOIVIN	R. LALONDE	A. SAVARD
R. A. BRIGGS	R. LAMAVRE	A. SAVARD
C.L. CHEWICK	J. LANGE	J. WALLACE
R.J. DORION	A. LAPIERRE	L. STRADIOTTO
E. FLEIHMAN	G. LEACH	R. WALLACE
J.L. VOISY	J. MUNROE	R. SERERES
W.F. GOODWARD	N. MURPHY	J. LEPAGE
G. GEMUS	J.P. LAFERRIERE	(RESPONDENTS).
(GRANTED).		

(SEE INDEXED ENDORSEMENT PAGE 1044).

15483-68-U: THE FOUNDATION COMPANY OF CANADA LIMITED AND A. D. ROSS & COMPANY LIMITED (APPLICANTS) v. THE UNITED ASSOCIATION OF JOURNEYMAN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 800 (RESPONDENT). (GRANTED),

(SEE INDEXED ENDORSEMENT PAGE 1046).

15569-68-U: THE GRIFFITH MINE, PICKANDS MATHER & CO. MANAGING AGENT (APPLICANT) v. THOSE PERSONS NAMED IN SCHEDULE "A" ATTACHED HERETO (RESPONDENTS). (WITHDRAWN).

APPLICATION FOR DECLARATION THAT LOCK-OUT UNLAWFUL DISPOSED OF DURING JANUARY

15470-68-U: TORONTO PHOTO ENGRAVERS UNION LOCAL 35-P (APPLICANT) v. GRAVURE CYLINDER DIVISION E.S.& A. ROBINSON (CANADA) LTD. (RESPONDENT), (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING JANUARY

14757-68-U: FRASER-BRACE ENGINEERING COMPANY, LIMITED (APPLICANT) v. M. ANDRIC ET AL (RESPONDENTS). (WITHDRAWN).

<u>15000-68-U:</u> FRASER-BRACE ENGINEERING COMPANY LIMITED (APPLICANT) v.		
ANTON LINNA	NILO NURMI	NILLO E. FLOYD
ONNI TOIVONEN	WILDOR VEILLETTE	ALAN RINTA
JEAN LAFRANCE	FERNAND PITRE	GEORGE RUDOLPHE WALA
MAURICE SEQUIN	JOHN CASTILLOUX	ERMOND CHARBONNEAU
AXEL RINALDO WESTERLUND	ARTHUR I. MORIN	ANDREW PADNER
MIKE OJA	PAUL LATENSEE	BESILE JOSEPH LEBLOND

DAVID GASCON
ALBERT THIBEAULT
ODILAS J. PREVOST
FRANK X. ROBICHAUD
RAYMOND AUBIN
WALFRED RONKA
TED VILLENEUVE
ALCIDE EAMPEAU
NICK DEMBISKI
JEAN LACOMBE
KAARLO HARJU
WAINO HIETANEN
AIMO ANTERO SILVAN
TOIVO KORPI

HENRI LOSIER
WAINO LAINE
AAPO HIETALA
NILLO NIEMI
TAUNO YRGO FILPUS
VAINO VIITALA
ONNI ANSELM KESKINEN
PAUL L. THERIAULT
LEONARD MOORE
UNTO VAINIONPAS
ANTTI DITTO
DESIRE ST. AMAND
TAUNO VANTTINEN
SANDERI SALMINEN

ALPHONSE LABONTE
LEO HENRI
RALPH BERGERON
KENNETH ANDRES
WILFRED LAPOLTE
JOSEPH PETTIPAS
VILHO IAHANAINEN
LEO ADELMAIRE RICHER
FERN GOULET
ED LAVOIE
MARC ROY
LUC DUMONT
AATOS KANNINEN
DAVID LOUIE RYAN
(RESPONDENTS).

(GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 1046).

15179-68-U: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. WESTERN CAISSENS LIMITED AND PETER KOZICKI (RESPONDENTS). (WITHDRAWN).

15338-68-U: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) v. THE WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 562, CONCRETE FORMING DIVISION (RESPONDENT). (WITHDRAWN).

15339-68-U: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) v. UNITED FORMING LIMITED (RESPONDENT). (WITHDRAWN).

15340-68-U: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) v. UNITED FORMING LIMITED (RESPONDENT). (WITHDRAWN).

15341-68-U: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) v. THE WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 562, CONCRETE FORMING DIVISION (RESPONDENT). (WITHDRAWN).

15348-68-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) v. GUS SIMONE (RESPONDENT). (WITHDRAWN).

15349-68-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) v. WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 562, CONCRETE FORMING DIVISION (RESPONDENT). (WITHDRAWN).

15353-68-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1190 (APPLICANT) v. WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 562, CONCRETE FORMING DIVISION (RESPONDENT). (WITHDRAWN).

15354-68-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1190 (APPLICANT) v. GUS SIMONE (RESPONDENT). (WITHDRAWN).

15358-68-U: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) v. GUS SIMONE (RESPONDENT). (WITHDRAWN).

15359-68-U: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) v. GUS SIMONE (RESPONDENT). (WITHDRAWN).

15370-68-U: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) v. SCARBOROUGH CENTENARY HOSPITAL (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1049).

15443-68-U: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 204 (APPLICANT) v. NORTH YORK BRANSON HOSPITAL (RESPONDENT). (WITHDRAWN).

15461-68-U: LUMBER & SAWMILL WORKERS UNION, LOCAL 2537 (APPLICANT) v. CONSOLIDATED-BATHURST LIMITED (RESPONDENT), (WITHDRAWN).

15484-68-U: THE FOUNDATION COMPANY OF CANADA LIMITED AND A. D. ROSS & COMPANY LIMITED (APPLICANTS) v. THE UNITED ASSOCIATION OF JOURNEYMAN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 800 (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 1056).

15485-68-U: THE FOUNDATION COMPANY OF CANADA LIMITED AND A. D. ROSS & COMPANY LIMITED (APPLICANTS) v.

P. BOXMA	C. O. GUINDON	T. G. LOVE
S. E. BEAUCHAMP	G. HALL	A. NEVEN
L. BEDARD	R. HOULE	A. PARADIS
E. BARBEAU	R. JOHNSTON	G. PLAYFORD
P. L. ADAM	A. KERR	A. RAYMOND
L. J. BEAUSOLEIL	C. LAFERRIERE	G. ROBERTSON
R. BLEAU	J. P. LAFERRIERE	G. ROSSI
N. A. BOULARD	P. LAJEUNESSE	W. ROQUE
C. BOIVIN	J. LALONDE	A. SAVARD
R. A. BRIGGS	R. LALONDE	A. SAVARD
C. L. CHEWICK	R. LAMAVRE	J. WALLACE
R. J. DORION	J. LANGE	L. STRADIOTTO
E. FLEIHMAN	A. LAPIERRE	R. WALLACE
J. L. VOISY	G. LEACH	R. SERERES
W. F. GOODWARD	J. MUNROE	J. LEPAGE
G. GEMUS	N. MURPHY	(RESPONDENTS).
(GRANTED).		

(SEE INDEXED ENDORSEMENT PAGE 1057).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING

JANUARY

15271-68-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) v. DUNWICH-DUTTON PUBLIC SCHOOL BOARD (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1059).

15284-68-U: RETAIL AND FOOD EMPLOYEES' LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (COMPLAINANT) v. L & W DISTRIBUTORS LTD., CARRYING ON BUSINESS AS N & D SUPERMARKET (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 1064).

15375-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. FEDERAL BOLT & NUT CORPORATION LIMITED (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 1067).

15381-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. R. REININGER & SONS LTD. (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1069).

15402-68-U: GENERAL TRUCK DRIVERS' UNION, LOCAL 938, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) v. SQUARE DEAL CARTAGE LIMITED (RESPONDENT). (DISMISSED).

15418-68-U: COMMUNICATIONS WORKERS OF AMERICA, (AFL-CIO-CLC) (COMPLAINANT) v. AMPLITROL ELECTRONICS LIMITED (RESPONDENT). (WITHDRAWN).

15462-68-U: LUMBER & SAWMILL WORKERS UNION, LOCAL 2537 (COMPLAINANT) v. CONSOLIDATED-BATHURST LIMITED (RESPONDENT). (WITHDRAWN).

15558-68-U: LOCAL 800 OF THE UNITED ASSOCIATION OF JOURNEYMAN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (COMPLAINANT) v. THE FOUNDATION COMPANY OF CANADA LIMITED AND A. D. ROSS AND COMPANY LIMITED (RESPONDENTS). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1070).

15583-68-U: ANTHONY MANCINI (COMPLAINANT) v. J. F. O'NEILL (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1072).

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

15431-68-M: WOOD, WIRE & METAL LATHERS' INTERNATIONAL UNION LOCAL 562, AND UNITED FORMING LIMITED (APPLICANTS).

(SEE INDEXED ENDORSEMENT PAGE 1073).

15552-68-M: CENTRALAB CANADA LIMITED, AND INTERNATIONAL UNION OF ELECTRICAL RADIO AND MACHINE WORKERS, AFL, CIO, CLC., AND ITS LOCAL 572 (APPLICANTS). (GRANTED).

APPLICATION UNDER SECTION 47A DISPOSED OF DURING JANUARY

15043-68-M: THE CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL #1076, AND CERTAIN MEMBERS OF THE CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL #251 (APPLICANT) v. THE BOARD OF HEALTH OF THE YORK-OSHAWA DISTRICT HEALTH UNIT, THE CORPORATION OF THE CITY OF OSHAWA, THE BOARD OF HEALTH OF THE YORK COUNTY HEALTH UNIT (RESPONDENTS). (DISMISSED).

APPLICATION UNDER SECTION 63 (FINANCIAL STATEMENT REQUESTED BY TRADE

UNION MEMBER) DISPOSED OF DURING JANUARY

15445-68-M: GEORGE GEASON (COMPLAINANT) v. LOCAL 63 - C.U.P.E. CARETAKERS (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1082).

APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING

JANUARY

15335-68-M: TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO (APPLICANT) v. DOBBIE INDUSTRIES LIMITED (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 1083).

15342-68-M: LOCAL 397, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA (APPLICANT) v. GOODYEAR TIRE AND RUBBER COMPANY OF CANADA LIMITED, BOWMANVILLE, ONTARIO (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 1084).

15444-68-M: SPRUCE FALLS POWER & PAPER COMPANY, LIMITED (APPLICANT) v. OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 166 (RESPONDENT). (WITHDRAWN).

JURISDICTIONAL DISPUTES

14743(a)-68-JD: FRASER-BRACE ENGINEERING COMPANY, LIMITED (COMPLAINANT) v. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486, AND LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION 493 (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 1087).

14743(b)-68-JD: FRASER-BRACE ENGINEERING COMPANY, LIMITED (APPLICANT) v. LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION 493 (RESPONDENT). (WITHDRAWN).

14996(a)-68-JD: FRASER-BRACE ENGINEERING COMPANY, LIMITED, SUDBURY, ONTARIO (COMPLAINANT) v. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS, LOCAL 2486, AND LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493, SUDBURY (RESPONDENTS). (WITHDRAWN).

14996(b)-68-JD: FRASER-BRACE ENGINEERING COMPANY, LIMITED, SUDBURY, ONTARIO (APPLICANT) v. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS, LOCAL 2486, SUDBURY ONTARIO (RESPONDENT). (WITHDRAWN).

15507(a)-68-JD: CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY (COMPLAINANT) v. WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 562 AND VERO FORMS LIMITED (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 1118).

15515(a)-68-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (COMPLAINANT) v. WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 562 AND RELLI FORMS LIMITED (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 1119).

15524(a)-68-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (COMPLAINANT) v. WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 562 AND FORMING CONSTRUCTION LIMITED (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 1120).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION

15397-68-R: LUMBER & SAWMILL WORKERS UNION LOCAL 2537 (APPLICANT) v. CONSOLIDATED-BATHURST LIMITED (RESPONDENT) v. INTERNATIONAL WOODWORKERS OF AMERICA (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS) (REQUEST DENIED).

INDEXED ENDORSEMENTS - CERTIFICATION

14428-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 765 (APPLICANT) v. PRE-CON MURRAY LIMITED (RESPONDENT) v. LOCAL NO. 7, OTTAWA, ONTARIO, BRICKLAYERS, MASONS AND PLASTERERS I.U. OF A. (INTERVENER #1) v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (INTERVENER #2).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: A. GOLDEN AND A. MACISAAC FOR THE APPLICANT; B. W. BINNING, R. BRADLEY AND R. PENNYCUICK FOR THE RESPONDENT; D. WILLIAMS FOR INTERVENER #1; AND R. KOSKIE FOR INTERVENER #2 AND FOR LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA.

DECISION OF THE BOARD: JANUARY 21, 1969.

1. THE APPLICANT, HEREINAFTER REFERRED TO AS "LOCAL 765", SEEKS CERTIFICATION AS THE BARGAINING AGENT FOR ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN A GEOGRAPHIC AREA EQUIVALENT TO THAT OF LOCAL 765'S OWN JURISDICTION, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN. IN ITS REPLY THE RESPONDENT TOOK THE POSITION THAT IT HAD NO EMPLOYEES DESCRIBED AS IRONWORKERS IN ITS EMPLOY IN THE GEOGRAPHIC AREA SET OUT IN THE APPLICATION. ACCORDINGLY, THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO AND REPORT BACK TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT. FOLLOWING A NUMBER OF MEETINGS WITH THE PARTIES IN OTTAWA THE EXAMINER ISSUED A LENGTHY REPORT DEALING WITH THE DUTIES AND RESPONSIBILITIES OF MOST OF THE RESPONDENT'S EMPLOYEES ENGAGED ON THE OTTAWA PROJECT.

2. FOLLOWING THE ISSUANCE OF THIS REPORT, THE BOARD HELD HEARINGS FOR THE PURPOSE OF PERMITTING THE PARTIES TO ADDUCE EVIDENCE ON OTHER MATTERS AND TO PRESENT ARGUMENT ON ALL ISSUES. SINCE THAT TIME THE BOARD HAS GIVEN CAREFUL CONSIDERATION TO ALL OF THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES IN THIS VERY COMPLEX AND DIFFICULT CASE. IN VIEW OF OUR FINAL CONCLUSION, WE DO NOT INTEND TO DEAL AT LENGTH WITH ALL THE ISSUES RAISED BUT, IN FAIRNESS TO THE PARTIES, WE HAVE DECIDED TO ANNOUNCE OUR DECISION ON SOME OF THE MATTERS SO ABLY AND FULLY DEALT WITH BY COUNSEL. WHILE OUR FINAL DECISION IS UNANIMOUS, AS WILL APPEAR LATER, THIS IS NOT SO ON ONE OF THE OTHER ISSUES.

3. THE FIRST POINT ARGUED BY COUNSEL WAS WHETHER THE EMPLOYEES WHICH LOCAL 765 CLAIMED WERE APPROPRIATE FOR INCLUSION IN THE PROPOSED BARGAINING UNIT WERE COVERED BY THE TERMS OF THE COLLECTIVE AGREEMENT BETWEEN INTERVENER #2, HEREINAFTER REFERRED TO AS "LOCAL 506"

AND THE RESPONDENT OR BY ANOTHER COLLECTIVE AGREEMENT BETWEEN LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA (HEREINAFTER REFERRED TO AS THE "LABOURERS INTERNATIONAL") AND THE RESPONDENT. THE FIRST MENTIONED AGREEMENT COVERS ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN WHAT IS EQUIVALENT TO BOARD AREA #8, TOGETHER WITH EMPLOYEES REQUIRED TO WORK OUTSIDE THAT AREA. THERE IS NO EVIDENCE TO SUGGEST THAT ANY EMPLOYEES OF THE RESPONDENT COVERED BY THE TERMS OF THIS AGREEMENT WERE WORKING ON THE OTTAWA PROJECT AND WE ACCORDINGLY FIND THAT LOCAL 506 HAS NO INTEREST IN THESE PROCEEDINGS.

4. ALTHOUGH THE LABOURERS INTERNATIONAL DID NOT FORMALLY INTERVENE IN THESE PROCEEDINGS, IT IS CLEAR THAT THE QUESTION AS TO WHETHER ITS AGREEMENT WITH THE RESPONDENT COVERED THE EMPLOYEES AFFECTED BY THE APPLICATION WAS PUT IN ISSUE BY THE RESPONDENT. FURTHERMORE, COUNSEL FOR LOCAL 506 MADE IT CLEAR TO THE BOARD THAT HE WAS APPEARING ON BEHALF OF THE LABOURERS INTERNATIONAL AS WELL AS LOCAL 506 AND IT IS NOT THE POLICY OF THE BOARD TO REQUIRE AN INCUMBENT TRADE UNION TO FILE A FORMAL INTERVENTION IN ORDER TO PRESERVE ITS CLAIM TO OUTSTANDING BARGAINING RIGHTS.

5. THE AGREEMENT IN QUESTION IS WITH THE ONTARIO PRECAST CONCRETE MANUFACTURERS' ASSOCIATION. THE RESPONDENT IS A MEMBER OF THAT ASSOCIATION AND IS SIGNATORY TO THE AGREEMENT. THE AGREEMENT BECAME EFFECTIVE AND OPERATIVE ON THE FIRST OF MAY, 1965 AND REMAINED IN FULL FORCE AND EFFECT UNTIL APRIL 30, 1968. THE PARTIES ARE PRESENTLY BARGAINING FOR THE RENEWAL, WITH MODIFICATIONS, OF THE SAID AGREEMENT. AN EARLIER AGREEMENT INVOLVING THE INTERNATIONAL Hod CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, A PREDECESSOR OF THE LABOURERS INTERNATIONAL, AND THE CANADIAN PRESTRESSED CONCRETE INSTITUTE (ONTARIO CHAPTER) AND ITS MEMBERS WAS CONSIDERED BY THE BOARD IN STANDARD PRESTRESSED STRUCTURES LIMITED, O.L.R.B. MONTHLY REPORT, JANUARY 1964, P. 580, AND IN PRE-CON MURRAY LIMITED, O.L.R.B. MONTHLY REPORT, OCTOBER 1967, P. 684. IN THE PRE-CON MURRAY LIMITED CASE LOCAL 721 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS APPLIED FOR A UNIT OF REINFORCING RODMEN. IN THE STANDARD PRESTRESSED STRUCTURES LIMITED CASE, THE CARPENTERS UNION APPLIED FOR A UNIT OF CARPENTERS. IN THE LATTER CASE THE BOARD HELD THAT THE CARPENTERS WERE COVERED BY THE COLLECTIVE AGREEMENT AND DISMISSED THE APPLICATION AS BEING UNTIMELY. IN THE PRE-CON MURRAY CASE, ALTHOUGH THERE WAS NO EXPRESS FINDING THAT THE REINFORCING RODMEN WERE COVERED BY THE AGREEMENT, THIS MUST BE IMPLIED FROM THE BOARD'S DECISION BECAUSE IT ORDERED A TWO-WAY VOTE BETWEEN LOCAL 721 AND THE INTERNATIONAL Hod CARRIERS. THE LATTER UNION WOULD NOT HAVE BEEN ON THE BALLOT IF THE BOARD HAD NOT FOUND THAT UNION HAD BARGAINING RIGHTS FOR THE REINFORCING RODMEN AND THOSE BARGAINING RIGHTS OBVIOUSLY FLOWED FROM THE COLLECTIVE AGREEMENT.

6. THE LANGUAGE OF THE AGREEMENT IN QUESTION IN THE INSTANT CASE IS TO ALL INTENTS AND PURPOSES THE SAME AS THAT CONSIDERED BY THE BOARD IN THE EARLIER CASES AND PARTICULARLY IN THE STANDARD PRESTRESSED STRUCTURES CASE. THE ONLY SIGNIFICANT DIFFERENCE IS THE ADDITION OF ARTICLE 4.03 WHICH PROVIDES THAT "THESE COMPOSITE CREWS SHALL BE PAID IN ACCORDANCE WITH THE WAGES, RATES, HOURS OF WORK, FRINGE BENEFITS AND WORKING CONDITIONS OF THE AREA COLLECTIVE AGREEMENTS OF ANY OTHER TRADE REQUIRED UNDER 4.02". THIS CLAUSE REMOVES ANY DOUBT THAT MAY HAVE EXISTED IN THE EARLIER CASES AS TO WHETHER PROVISION WAS MADE IN THOSE AGREEMENTS FOR THE WAGES, ETC., OF PERSONS HIRED IN ACCORDANCE WITH THE PROVISIONS OF 4.02. HOWEVER, THIS DOES NOT, IN OUR VIEW, MEAN THAT SUCH EMPLOYEES ARE NOT COVERED BY THE AGREEMENT. RATHER, IT ENHANCES THE BOARD'S EARLIER FINDINGS BECAUSE THERE IS NOW NO DOUBT THAT THE PARTIES TO THE AGREEMENT BARGAINED FOR AND IN FACT ESTABLISHED THE MANNER IN WHICH PERSONS HIRED UNDER 4.02 ARE TO BE PAID. CONSEQUENTLY, IT IS THE CONCLUSION OF THE CHAIRMAN AND BOARD MEMBER R.W. TEAGLE THAT THE AGREEMENT IN THIS CASE COVERED THE PERSONS FOR WHOM LOCAL 765 SEEKS CERTIFICATION AND THAT THE LABOURERS INTERNATIONAL IS THEIR BARGAINING AGENT. BOARD MEMBER E. BOYER AGREES WITH THE VIEWS EXPRESSED BY OUR LATE COLLEAGUE, RUSSELL HARVEY, IN THE STANDARD PRESTRESSED CASE AND ACCORDINGLY WOULD FIND THAT THE COLLECTIVE AGREEMENT DOES NOT COVER THE EMPLOYEES FOR WHOM LOCAL 765 SEEKS BARGAINING RIGHTS.

7. THE APPLICANT, LOCAL 765, IN PROPOSING A BARGAINING UNIT OF ALL IRONWORKERS IS RELYING ON THE PROVISIONS OF SUBSECTION 2 OF SECTION 6 OF THE LABOUR RELATIONS ACT, THAT IS, IT IS ASSERTING A CLAIM TO A CRAFT BARGAINING UNIT. IN ORDER TO SUCCEED THE APPLICANT MUST ESTABLISH:

- (1) THAT THE EMPLOYEES WHOM IT CLAIMS TO REPRESENT ARE EMPLOYEES WHO EXERCISE TECHNICAL SKILLS OR WHO ARE MEMBERS OF A CRAFT BY REASON OF WHICH THEY ARE DISTINGUISHABLE FROM OTHER EMPLOYEES;
- (2) THAT THESE EMPLOYEES COMMONLY BARGAIN SEPARATELY AND APART FROM OTHER EMPLOYEES THROUGH A TRADE UNION THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO SUCH SKILLS OR CRAFT;
- (3) THAT THE APPLICATION IS MADE BY A TRADE UNION PERTAINING TO SUCH SKILLS OR CRAFT.

(SEE DUPONT OF CANADA, LIMITED, O.L.R.B. MONTHLY REPORT, JANUARY 1965,
P. 539)

8. IT WAS ARGUED STRENUOUSLY BY THE RESPONDENT AND THE LABOURERS INTERNATIONAL THAT THE 8 EMPLOYEES WHOM THE APPLICANT SEEKS TO INCLUDE IN THE UNIT ARE NOT DISTINGUISHABLE BY REASON OF THEIR TECHNICAL SKILLS OR CRAFT. AFTER CAREFUL CONSIDERATION, WE HAVE COME TO THE CONCLUSION THAT THESE EMPLOYEES ARE DISTINGUISHABLE FROM OTHER EMPLOYEES WITHIN THE MEANING OF THE FIRST PART OF SUBSECTION 2 OF SECTION 6. THE EVIDENCE IS QUITE CLEAR THAT THESE EMPLOYEES WORKED IN COMPOSITE CREWS AND THERE IS NO DOUBT IN OUR MINDS THAT THEY WERE IN FACT HIRED UNDER THE PROVISIONS OF ARTICLE 4.02 OF THE COLLECTIVE AGREEMENT BETWEEN THE LABOURERS INTERNATIONAL AND THE RESPONDENT. THAT SECTION PROVIDES:

IT IS HEREBY AGREED THAT WHERE IT IS NECESSARY FOR ECONOMY AND EXPEDIENCY ON ANY PROJECT TO EMPLOY KEY PERSONNEL AND COMPOSITE CREWS IN THE PROVINCE OF ONTARIO, THE SAID EMPLOYER SHALL BE ALLOWED SAME, WITH THE UNDERSTANDING THAT SAID KEY PERSONNEL OR COMPOSITE CREWS ARE MEMBERS IN GOOD STANDING OF THE BUILDING AND CONSTRUCTION TRADE UNIONS AND SUCH PERSONS ARE AVAILABLE LOCALLY.

IT ALSO SEEMS CLEAR THAT THE EMPLOYEES WERE PAID IN ACCORDANCE WITH ARTICLE 4.03 WHICH PROVIDES AS FOLLOWS:

THESE COMPOSITE CREWS SHALL BE PAID IN ACCORDANCE WITH THE WAGES, RATES, HOURS OF WORK, FRINGE BENEFITS AND WORKING CONDITIONS OF THE AREA COLLECTIVE AGREEMENTS OF ANY OTHER TRADE REQUIRED UNDER 4.02.

THEY WERE PAID THE IRONWORKERS RATE FOR THE OTTAWA AREA AND, FURTHER, PAYMENTS WERE ALSO MADE INTO THE IRONWORKERS WELFARE FUND ON BEHALF OF EACH INDIVIDUAL EMPLOYEE. OF PARTICULAR SIGNIFICANCE ARE THE WORDS IN ARTICLE 4.03 "OF ANY OTHER TRADE REQUIRED UNDER 4.02". PRIMA FACIE THAT LANGUAGE DISTINGUISHES THE PERSONS HIRED UNDER THE PROVISIONS OF ARTICLE 4.02 AND THE BURDEN IS THUS ON THE PARTIES TO THE COLLECTIVE AGREEMENT TO ESTABLISH THAT SUCH PERSONS ARE NOT "DISTINGUISHABLE". IN OUR VIEW, THE PARTIES HAVE NOT OVERCOME THAT BURDEN. AS WAS NOTED ABOVE, THE EMPLOYEES IN QUESTION ARE PAID THE OTTAWA IRONWORKERS' RATE AND THIS RATE DIFFERS FROM THAT RECEIVED BY ANY OTHER OF THE EMPLOYEES ON THE PROJECT. MOREOVER, ALMOST WITHOUT EXCEPTION THE MEN ON THE JOB REFER TO THE OTHER EMPLOYEES BY THEIR CLASSIFICATION OF "LABOURER", "MASON", "WELDER" OR "RIGGER". FINALLY, WHILE IT IS POSSIBLE TO GO THROUGH THE REPORT OF THE EXAMINER AND SELECT PASSAGES WHICH TEND TO SUPPORT THE ARGUMENTS ADVANCED BY THE RESPONDENT AND THE LABOURERS INTERNATIONAL, THE MAIN THRUST OF THE WHOLE OF THE EVIDENCE, IN OUR VIEW, LEADS TO THE CONCLUSION THAT THESE EMPLOYEES SPEND THE MAJORITY OF THEIR TIME ENGAGED IN WELDING AND RIGGING.

9. WE CONCEDE THAT HAVING REGARD TO THE BOARD'S DECISIONS IN SUCH CASES AS CANADIAN ENGINEERING AND CONTRACTING COMPANY LIMITED, O.L.R.B. MONTHLY REPORT, JULY 1964, P. 174, AND NEDAN FORMING, O.L.R.B. MONTHLY REPORT, MAY 1965, P. 100, IT IS LIKELY THAT PERSONS OTHER THAN THE IRONWORKERS MIGHT WELL BE INCLUDED IN THE BARGAINING UNIT. SINCE IT IS NOT NECESSARY TO ARRIVE AT ANY FINAL CONCLUSION ON THIS POINT, WE MAKE NO DETERMINATION AS TO WHICH OTHER EMPLOYEES WOULD BE SO AFFECTED. INDEED, ON THE EVIDENCE PRESENTLY BEFORE US IT MIGHT BE VERY DIFFICULT TO DETERMINE THAT QUESTION.

10. IN THE NEDAN CASE AND IN SUCH OTHER CASES AS GEORGE ARMSTRONG CO. LIMITED, O.L.R.B. MONTHLY REPORT, JANUARY 1967, P. 773, THE BOARD HAS APPLIED A RULE THAT A PERSON ENGAGING IN MORE THAN ONE TRADE IS CHARACTERIZED FOR PURPOSES OF INCLUSION OR EXCLUSION FROM A BARGAINING UNIT BY THE TRADE IN WHICH HE SPENDS THE MAJORITY OF HIS TIME. THUS, IF AN EMPLOYEE DOES BOTH CARPENTRY AND LABOURING WORK, HE WILL BE CHARACTERIZED AS A LABOURER IF HE SPENDS THE MAJORITY OF THIS TIME DOING A LABOURER'S JOB. ADMITTEDLY, IN SOME CASES THIS IS A DIFFICULT RULE TO APPLY BECAUSE IT IS SOMETIMES VIRTUALLY IMPOSSIBLE TO ESTABLISH HOW MUCH TIME IS SPENT ON DIFFERENT TYPES OF WORK. IN THE GEORGE ARMSTRONG CASE THE BOARD WAS URGED TO APPLY A DIFFERENT RULE, NAMELY, IF THE PRIME REASON FOR HIRING A PERSON IS BECAUSE OF A PARTICULAR SKILL AND IF THE EMPLOYEE USES THIS PARTICULAR SKILL WHEN NEEDED, THEN THIS SHOULD BE SUFFICIENT FOR THE PURPOSE OF CHARACTERIZING THAT EMPLOYEE'S TRADE OR CRAFT. IN THAT CASE THE BOARD MADE NO DECISION AS TO WHETHER TO ADOPT SUCH A RULE. IT SEEMS TO US, ON FURTHER REFLECTION, THAT THE PRINCIPLE DOES HAVE SOME MERIT, PROVIDED THE EMPLOYEE IS PAID ACCORDING TO THE TRADE OR CRAFT FOR WHICH HE WAS HIRED. FOR EXAMPLE, IT MIGHT WELL BE USED IN A CASE WHERE IT IS NOT POSSIBLE TO DETERMINE HOW MUCH TIME IS SPENT IN DOING TWO DIFFERENT TYPES OF WORK OR WHERE THE EVIDENCE ESTABLISHES THAT AN EMPLOYEE'S TIME IS EQUALLY DIVIDED BETWEEN TWO TRADES. IT MAY BE THAT IT SHOULD REPLACE THE MAJORITY RULE PRESENTLY FOLLOWED BY THE BOARD. WE EXPRESS NO FINAL OPINION ON THIS POINT BUT WILL BE PREPARED IN FUTURE CASES TO ENTERTAIN REPRESENTATIONS WITH RESPECT TO THE POSSIBLE ADOPTION OF SUCH A RULE.

11. THE THIRD REQUIREMENT UNDER SUBSECTION 2 OF SECTION 6 IS THAT THE APPLICATION BE MADE BY A TRADE UNION "PERTAINING TO SUCH SKILLS OR CRAFT". IT SEEMS CLEAR FROM THE CONSTITUTION OF THE APPLICANT THAT IT SATISFIES THIS REQUIREMENT.

12. THE SECOND POINT WHICH AN APPLICANT RELYING ON SECTION 6(2) MUST ESTABLISH IS THAT THE KIND OF EMPLOYEES FOR WHOM IT IS SEEKING CERTIFICATION COMMONLY BARGAINS SEPARATELY AND APART FROM OTHER EMPLOYEES THROUGH A TRADE UNION THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO SUCH SKILLS OR CRAFTS. THE EVIDENCE ON THIS POINT IS AS FOLLOWS:

(1) AN AGREED STATEMENT OF FACTS IN WHICH THE PARTIES AGREE:

- (a) THAT THE CONSTITUTION OF LOCAL 765 COVERS PRECAST WORK,
 - (b) THAT THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS (HEREINAFTER REFERRED TO AS THE "IRONWORKERS") HAS REPRESENTED EMPLOYEES ENGAGED IN RIGGING, HOOKING ON, SIGNALLING, LANDING, SHIMMING, ANCHORING, WELDING AND BOLTING OF PRECAST CONCRETE. THE TERM "EMPLOYEES" IN THIS INSTANCE REFERS TO EMPLOYEES OF COMPANIES THAT DO PRECAST CONCRETE WORK.,,
 - (c) THAT THE IRONWORKERS UNION IS SIGNATORY TO COLLECTIVE AGREEMENTS COVERING PRECAST WORK (AS SET OUT IN (b)) WITH COMPANIES DOING PRECAST WORK, AND
 - (d) THAT MEMBERS OF THE IRONWORKERS HAVE WORKED FOR THE RESPONDENT COMPANY IN PRECAST WORK PRIOR TO THE PRESENT APPLICATION ON OTHER JOBS IN THE PROVINCE.
- (2) LOCAL 765 AND THE LABOURERS INTERNATIONAL AGREED THAT A DOCUMENT ENTITLED "TRADE AGREEMENT" HAD BEEN SIGNED BY THE VARIOUS PROVINCIAL LOCALS OF THE LABOURERS INTERNATIONAL AND THE IRONWORKERS ON JUNE 12, 1964. IN THIS DOCUMENT THE WORK DESCRIBED ABOVE IN 1(b) IS AGREED BY THE SIGNATORIES TO BELONG TO THE IRONWORKERS. THE RESPONDENT COMPANY DID NOT AGREE THAT THIS DOCUMENT WAS RELEVANT AND THE LABOURERS INTERNATIONAL DID NOT AGREE THAT IT WAS A BINDING AGREEMENT.
- (3) A COLLECTIVE AGREEMENT BETWEEN THE IRONWORKERS' DISTRICT COUNCIL OF EASTERN CANADA ON BEHALF OF ONTARIO LOCALS AND SCHELL INDUSTRIES LIMITED - ERECTION DEPARTMENT.
- (4) SEVENTY-FIVE TO EIGHTY PER CENT OF THE WORK OF ERECTING PRECAST ARCHITECTURAL PANELS, INCLUDING WELDING, (THE TYPE OF WORK INVOLVED IN THE INSTANT APPLICATION) IN ONTARIO IS PERFORMED BY MEMBERS OF LOCALS OF THE LABOURERS INTERNATIONAL.

13. IN SO FAR AS THE CONSTITUTION OF THE IRONWORKERS IS CONCERNED, THAT MERELY ESTABLISHES A CLAIM TO THE WORK AND NOT THAT THE UNION IN QUESTION COMMONLY BARGAINS WITH RESPECT TO IT. THE SAME IS TRUE OF THE TRADE AGREEMENT BETWEEN THE TWO UNIONS. MOREOVER, IT APPEARS THAT THIS AGREEMENT WAS NEVER ADHERED TO. AT THIS POINT WE SHOULD MAKE IT CLEAR THAT WE WERE NOT IMPRESSED WITH THE ARGUMENT THAT A DISTINCTION SHOULD BE MADE BETWEEN WORK ON PRECAST ARCHITECTURAL PANELS AND ON STRUCTURAL PANELS. IN OUR VIEW, IT IS ALL PRECAST WORK AND THAT IS ESSENTIALLY WHAT WE ARE CONCERNED WITH IN THIS APPLICATION.

14. THE AGREED STATEMENT OF FACTS AS SET OUT IN 1(B) AND (C) ABOVE, STANDING BY ITSELF, WOULD SEEM TO AMOUNT TO AN ADMISSION THAT THE IRONWORKERS COMMONLY BARGAIN FOR PERSONS ENGAGED IN THE WORK REFERRED TO IN THE STATEMENT. HOWEVER, THIS AGREED STATEMENT MUST BE VIEWED IN THE CONTEXT OF THE OTHER EVIDENCE ON THIS POINT. FOLLOWING THE INTRODUCTION OF THE STATEMENT THE RESPONDENT AND THE LABOURERS INTERNATIONAL INTRODUCED THE EVIDENCE ON THE VOLUME OF WORK PERFORMED BY MEMBERS OF THE LABOURERS INTERNATIONAL. CLEARLY THAT EVIDENCE ESTABLISHES THAT THAT UNION COMMONLY BARGAINS FOR PERSONS ENGAGED IN SEVENTY-FIVE TO EIGHTY PER CENT OF THE PRESENT WORK IN ONTARIO. FURTHERMORE, THIS BARGAINING IS ON AN "ALL EMPLOYEE" BASIS RATHER THAN ON THE BASIS OF THE VARIOUS SKILLS INVOLVED.

15. IT WAS ARGUED THAT THIS EVIDENCE WAS SUFFICIENT TO CAST DOUBT ON THE AGREED STATEMENT OF FACTS. WHETHER THIS BE SO OR NOT (AND WE DO NOT FIND IT NECESSARY TO DECIDE THIS POINT) THE APPLICANT CHOSE TO CALL REPLY EVIDENCE. WHILE THAT EVIDENCE SHOWED THAT IRONWORKERS DID PRECAST WORK ON TWO JOBS, IT DOES NOT ESTABLISH THAT THE IRONWORKERS BARGAINED ON THEIR BEHALF. WE POINT OUT AT THIS STAGE THAT THIS IS ALSO TRUE OF THE EVIDENCE THAT THE RESPONDENT HAD PREVIOUSLY EMPLOYED IRONWORKERS ON PRECAST WORK. THERE IS NO SUGGESTION THAT THIS CAME ABOUT AS A RESULT OF ANY BARGAINING BETWEEN THE IRONWORKERS AND THE RESPONDENT.

16. ALSO BY WAY OF REPLY THE APPLICANT FILED THE SCHELL INDUSTRIES AGREEMENT. WE FIND THIS, ALONG WITH THE EVIDENCE OF THE TWO WITNESSES, TO BE MOST DISCONCERTING. AS WAS POINTED OUT IN THE DUPONT OF CANADA LIMITED CASE (*SUPRA*), A FEW SCATTERED AND ISOLATED INSTANCES OF BARGAINING DO NOT AMOUNT TO "COMMONLY BARGAIN" WITHIN THE MEANING OF SECTION 6(2). THE APPLICANT WAS CLEARLY SEEKING TO MEET THE EVIDENCE INTRODUCED TO QUALIFY THE AGREED STATEMENT OF FACTS. WHY THEN WAS ONLY ONE AGREEMENT FILED? IF THERE WERE OTHER AGREEMENTS THERE WAS AMPLE OPPORTUNITY TO INTRODUCE THEM.

OFFICIALS OF THE APPLICANT WERE PRESENT AT THE HEARING WHO COULD HAVE BEEN CALLED TO GIVE EVIDENCE AS TO THE EXISTENCE OF OTHER AGREEMENTS. WHY WERE THEY NOT CALLED? AN EXPLANATION WAS NOT FORTHCOMING.

17. AFTER GIVING CAREFUL CONSIDERATION TO ALL OF THE EVIDENCE, WE FIND OURSELVES IN DOUBT AS TO WHETHER THE TYPE OF EMPLOYEES FOR WHOM THE APPLICANT IS SEEKING BARGAINING RIGHTS COMMONLY BARGAIN SEPARATELY AND APART FROM OTHER EMPLOYEES THROUGH A TRADE UNION THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO THEIR SKILL OR CRAFT. THE TRADE UNION IN THIS INSTANCE MUST BE THE APPLICANT, BECAUSE THERE IS NO SUGGESTION THAT ANY OTHER TRADE UNION BARGAINS FOR SUCH EMPLOYEES ON A CRAFT BASIS. THE ONUS IS ON THE APPLICANT TO SATISFY THE BOARD ON THIS ASPECT OF THE CASE AND IT HAS FAILED TO DO SO. WE THEREFORE FIND THAT THE APPLICANT HAS NOT ESTABLISHED THAT IT IS ENTITLED TO A CRAFT UNIT UNDER THE PROVISIONS OF SECTION 6(2) OF THE LABOUR RELATIONS ACT AND THE APPLICATION ACCORDINGLY MUST BE DISMISSED.

18. WE HAVE NOT FOUND IT NECESSARY TO DEAL WITH THE RELATIONSHIP BETWEEN INTERVENER #1 AND THE RESPONDENT OR WITH THE STATUS OF ANGUS. WITH RESPECT TO THE FIRST MATTER IT IS AT BEST COLLATERAL TO THE ISSUES IN THIS PROCEEDING AND, IN ANY EVENT, THERE IS PROBABLY NOT SUFFICIENT EVIDENCE TO COME TO ANY FINAL CONCLUSION, EVEN IF IT WERE DESIRABLE TO DO SO. SO FAR AS ANGUS IS CONCERNED, WE DO NOT SEE THAT IT WOULD SERVE ANY USEFUL PURPOSE TO MAKE A DECISION ON HIS STATUS. FINALLY, OUR DECISION MAKES IT UNNECESSARY TO DEAL WITH THE ARGUMENTS BASED ON SUBSECTION 5 OF SECTION 7 OF THE ACT.

19. IN THE RESULT, THEN, THE APPLICATION IS DISMISSED.

14820-68-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE U.S.A. & CANADA (APPLICANT) v. IMPERIAL OPTICAL COMPANY LIMITED (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND D. ALAN PAGE.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER

D. ALAN PAGE: JANUARY 29, 1969.

1. ON JULY 23RD, 1968, THE BOARD AUTHORIZED MR. J.R. HENDERSON TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT AND IN PARTICULAR WHETHER ONE OR BOTH OF THE RESPONDENT'S LENS OPERATIONS IN METROPOLITAN TORONTO CONSTITUTE AN APPROPRIATE BARGAINING UNIT. ON NOVEMBER 21ST, 1968, THE BOARD AUTHORIZED AN EXAMINER TO INQUIRE INTO AND REPORT TO THE BOARD ON THE INTERCHANGE OF EMPLOYEES BETWEEN THE TWO PLANTS OF THE RESPONDENT IN TORONTO.

2. THE BOARD HAS CONSIDERED ALL OF THE EVIDENCE CONTAINED IN THE INTERIM REPORT OF THE EXAMINER DATED SEPTEMBER 26TH, 1968 AND A SUBSEQUENT REPORT OF THE EXAMINER DATED JANUARY 2ND, 1969, AND THE REPRESENTATIONS WITH RESPECT THERETO CONTAINED IN THE LETTERS FROM THE REPRESENTATIVE OF THE RESPONDENT DATED OCTOBER 18TH, 1968 AND JANUARY 7TH, 1969, AND THE LETTERS OF THE APPLICANT DATED OCTOBER 9TH, 1968 AND JANUARY 10TH, 1969.

3. THIS APPLICATION IS MADE FOR THE EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT 204 KING STREET WEST IN TORONTO. THE COMPANY ALSO OPERATES A PLANT SITUATED CLOSE BY AT 365 DUNDAS STREET EAST. THE EMPLOYEES AT BOTH LOCATIONS PERFORM THE SAME TYPE OF WORK INVOLVING SIMILAR OPERATIONS AND EMPLOYING SIMILAR SKILLS AS A GROUP. THE RESPONDENT ADMINISTERS BOTH PHASES OF ITS PRODUCTION OPERATIONS IN METROPOLITAN TORONTO JOINTLY AND ALONG WITH ITS OTHER OPERATIONS. THE EMPLOYEES AT BOTH PLANTS HAVE THE SAME WORKING CONDITIONS AND EMPLOYMENT BENEFITS WITH A COMMON PAYROLL, AND COMMON REMITTANCES COVERING UNEMPLOYMENT INSURANCE, HOSPITALIZATION AND INCOME TAX. A PORTION OF THE PRODUCTION AT THE KING STREET PLANT IS SENT TO THE DUNDAS STREET PLANT FOR EXPORT SHIPMENTS. THE RECLAIMING OF MATERIALS FOR BOTH LOCATIONS IS CARRIED OUT AT THE DUNDAS STREET PLANT. THE PURCHASING FUNCTION IS MAINTAINED AT DUNDAS STREET PLANT FOR BOTH PLANTS AND THE MATERIALS USED COME FROM THE SAME SOURCE. FURTHER, THERE IS EVIDENCE OF SOME PERMANENT AND ALSO TEMPORARY TRANSFERS OF EMPLOYEES BETWEEN THE TWO PLANTS. AS WELL, SOME EMPLOYEES WHO REGULARLY WORK AT THE DUNDAS STREET PLANT ARE SENT ON OCCASION TO WORK AT THE KING STREET PLANT ON REPAIRS AND MAINTENANCE BUT FOR THESE PURPOSES ARE NOT CONSIDERED TRANSFERRED AS BETWEEN PLANTS IN SO FAR AS THEIR PAY RECORDS. EMPLOYEES IN THE ENGINEERING DEPARTMENT LOCATED IN THE DUNDAS STREET PLANT PROVIDE SERVICES TO BOTH PLANTS AND ARE SENT FROM ONE PLANT TO THE OTHER. IN THESE LATTER RESPECTS, THEREFORE, HAVING REGARD TO THE NATURE OF THE WORK, IN OUR OPINION, THERE WOULD BE AN ECONOMIC DISADVANTAGE TO THE RESPONDENT IN THE MAINTAINING OF SEPARATE BARGAINING UNITS.

4. ON THE EVIDENCE BEFORE US AND HAVING CONSIDERED AND APPLIED THE CRITERIA SET OUT IN THE USARCO LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1967, P. 526 WE ARE COMPELLED TO FIND THAT THE RESPONDENT'S BUSINESS AT THE TWO LOCATIONS IS AN INTEGRATED OPERATION AND THE EMPLOYEES AT THOSE LOCATIONS FORM ONE APPROPRIATE UNIT.

5. THE BOARD THEREFORE FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS LENS PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

6. IN VIEW OF THE BOARD'S FINDING ABOVE, IT IS APPARENT THAT THE BARGAINING UNIT WOULD BE COMPRISED OF APPROXIMATELY 229 EMPLOYEES. SINCE THE APPLICANT IN THIS CASE HAS ONLY FILED EVIDENCE OF MEMBERSHIP ON BEHALF OF 49 EMPLOYEES, THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JULY 12TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. ACCORDINGLY, THE EXAMINER NEED NOT COMPLETE HIS INQUIRY INTO THE LIST OF EMPLOYEES FILED BY THE RESPONDENT.

8. THE APPLICATION IS THEREFORE DISMISSED.

DECISION OF BOARD MEMBER O. HODGES: JANUARY 29, 1969.

I DISSENT. HAVING REGARD TO ALL OF THE EVIDENCE SET OUT IN THE TWO REPORTS OF THE EXAMINER IN THIS MATTER AND THE REPRESENTATIONS OF THE PARTIES, I WOULD FIND THAT THE UNIT FOR WHICH THE APPLICANT HAS APPLIED FOR IN THIS APPLICATION AT THE RESPONDENT'S PLANT AT KING STREET EAST, TORONTO, FORMS AN APPROPRIATE BARGAINING UNIT.

14899-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE CORPORATION OF THE CITY OF OWEN SOUND (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND F. W. MURRAY.

DECISION OF THE BOARD: JANUARY 16, 1969.

3. THE BOARD FURTHER FINDS THAT ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT THE CITY HALL, IN OWEN SOUND, SAVE AND EXCEPT CITY CLERK, DEPUTY CITY CLERK, CITY TREASURER, ASSISTANT CITY TREASURER, ASSESSMENT COMMISSIONER, DEPUTY ASSESSMENT COMMISSIONER, CITY ENGINEER, SUPERINTENDENT OF WORKS, CITY MANAGER, SECRETARY TO CITY MANAGER, PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE PARTIES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE FOLLOWING PERSONS EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE EXCLUDED FROM THE BARGAINING UNIT: MARILYN ALEXANDER, RONALD GILLESPIE, FERN MCLEAN, F. W. SLOCOMBE AND K. F. VALLINS.

5. THE BOARD HAS CAREFULLY CONSIDERED ALL OF THE EVIDENCE SET OUT IN THE EXAMINER'S REPORT AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO AND DECLARES THAT MARION BARRETT, SECRETARY, J. E. FERGUSON, PURCHASING AGENT, JOHN INGLIS, DEPUTY TAX COLLECTOR, THOMAS McCOMB, ASSISTANT BUILDING INSPECTOR, AND KEITH BEATTIE, INSPECTOR, DO NOT EXERCISE MANAGERIAL FUNCTIONS OR ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

6. THE BOARD FURTHER DECLARES THAT EILEEN MATHESON, DEPUTY CITY CLERK, DONALD McWHIRTER, DEPUTY ASSESSMENT COMMISSIONER, ANNE BRANDON, BOOKKEEPER, DO EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND ARE THEREFORE NOT INCLUDED IN THE BARGAINING UNIT.

7. WITH RESPECT TO DOLORES SCHLORFF WHO IS EMPLOYED BY THE RESPONDENT AS A SECRETARY AND RECEIVES PAY FOR 20 HOURS OF WORK IN ONE WEEK AND 30 HOURS IN THE FOLLOWING WEEK AND IS REGULARLY EMPLOYED ON THIS BASIS, THE BOARD FINDS THAT SHE IS NOT AN EMPLOYEE REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, NOR DOES SHE EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF THE ACT AND THEREFORE IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT. THE BOARD IN THIS RESPECT HAS HAD REFERENCE TO THE SYDENHAM HOSPITAL CASE, O.L.R.B. MONTHLY REPORT, MAY 1967, p. 135.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON AUGUST 1ST, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

15019-68-R: TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO
(APPLICANT) v. AFFILIATED MEDICAL PRODUCTS LIMITED (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: T. ARMSTRONG, W. CLARKE FOR THE
APPLICANT, W. TEMPLE, W. PATTON, G. LUCAS FOR THE RESPONDENT.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER O. HODGES:

JANUARY 9, 1969.

1. FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER IN THIS MATTER A HEARING WAS HELD BY THE BOARD TO CONSIDER THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE EXAMINER'S REPORT DATED OCTOBER 10TH, 1968.

2. THE RESPONDENT CHALLENGED THE INCLUSION IN THE BARGAINING UNIT OF AN EMPLOYEE CLASSIFIED AS AN ASSISTANT COMPOUNDER AND THOSE EMPLOYEES CLASSIFIED AS QUALITY CONTROL LABORATORY TECHNICIANS. DEALING FIRSTLY WITH THE EVIDENCE OF MR. HAICK, THE ASSISTANT COMPOUNDER, IN PART IS THAT HIS LINE OF SUPERVISION IS DIRECTLY TO THE CHEMIST. HE IS HOURLY RATED AND PUNCHES A TIME CLOCK AND IS PAID FOR OVERTIME. HE WORKS IN AN AREA CONTAINING COMPOUNDING TANKS AND DRUMS ADJACENT TO THE PLANT AREA. HE IS RESPONSIBLE FOR MIXING CHEMICALS AND DISPERSIONS USED IN COMPOUNDING LATEX. MR. KEMP IN HIS EVIDENCE STATED THAT THE COMPOUNDING IS THE FIRST STEP IN THE PRODUCTION PROCESS. THE FORMULAE WITH WHICH HE WORKS ARE PRE-SET, AND ALTHOUGH SUCH FORMULAE MAY BE CONFIDENTIAL INFORMATION, IN THE CIRCUMSTANCES OF THIS CASE, THIS FACTOR ALONE DOES NOT CLOTHE HIM WITH MANAGERIAL FUNCTIONS. HE DOES GO INTO THE PRODUCTION AREA TO CHECK COAGULANTS AND STARCH SOLUTIONS BUT DOES NOT DO ANY OF HIS WORK AS SUCH IN THAT AREA. IN OUR OPINION THE EVIDENCE DISCLOSES THAT WHILE HE DOES WORK ON HIS OWN AND REPORTS TO THE CHEMIST, HIS PRIMARY INTERESTSHAVING REGARD TO THE FOREGOING WOULD BE ALLIED TO THE EMPLOYEES IN THE PLANT. ACCORDINGLY, THE BOARD FINDS THAT THE PERSON CLASSIFIED AS THE ASSISTANT COMPOUNDER IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

3. WITH RESPECT TO THOSE PERSONS CLASSIFIED BY THE RESPONDENT AS QUALITY CONTROL LABORATORY TECHNICIANS THE EVIDENCE IS THAT THERE ARE THREE SUCH EMPLOYEES, ONE WORKING ON EACH OF THREE SHIFTS. THE QUALITY CONTROL LABORATORY IS LOCATED ADJACENT TO THE FOREMAN'S OFFICE AND OUTSIDE THE PRODUCTION AREA OF THE PLANT AND ADJACENT TO THE COMPOUND AREA. NO PRODUCTION EMPLOYEES WORK IN THIS AREA AND ARE NOT ALLOWED IN THE AREA EXCEPT WHEN THEY REQUIRE FIRST AID FOR WHICH THESE EMPLOYEES ARE RESPONSIBLE IN ADDITION TO THEIR OTHER DUTIES. MISS

FERGUSON TESTIFIED THAT SHE WORKS BY HERSELF IN THE QUALITY CONTROL LABORATORY AND REPORTS TO THE CHEMIST AND TO THE PRODUCTION FOREMAN ON THE SHIFT. SHE IS HOURLY RATED, PUNCHES A TIME CLOCK AND DOES NOT WORK OVERTIME. HER CONDITIONS OF EMPLOYMENT APPEAR TO BE SIMILAR TO THOSE OF THE PLANT EMPLOYEES. SHE GOES INTO THE PRODUCTION AREA FOUR TIMES A SHIFT TO TAKE SAMPLES OF VARIOUS CHEMICALS WHICH ARE THEN TESTED IN THE LABORATORY. SHE RECORDS HERE FINDINGS AND REPORTS ANY NECESSARY ADJUSTMENTS TO THE SHIFT FOREMAN. THE FOREMAN DOES NOT GIVE HER ORDERS BUT CAN REQUEST HER TO RUN A TEST. SHE HAS NO DEALINGS WITH THE MAIN OFFICE. THE EQUIPMENT WITH WHICH SHE WORKS IS COMMON TO THAT FOUND IN A LABORATORY.

4. FROM THE ORGANIZATIONAL CHART FILED BY THE RESPONDENT IN THIS MATTER, THE RESPONDENT HAS SET UP THE QUALITY CONTROL LABORATORY AS A SEPARATE DEPARTMENT REPORTING THROUGH THE CHEMIST. THIS, HOWEVER, IS BUT ONE OF THE FACTORS THAT THE BOARD USUALLY TAKES INTO ACCOUNT IN ASSESSING THE QUESTION OF AN EMPLOYEE'S COMMUNITY OF INTEREST. WE HAVE REFERENCE IN THIS REGARD TO THE ALMA PAINT AND VARNISH Co. LTD. CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1968, p. 551 at p. 553. HAVING CONSIDERED THE CRITERIA SET OUT IN THAT CASE AND APPLYING SUCH TO THE FACTS OF THE INSTANT CASE WE ARE NOT SATISFIED THAT WE SHOULD DEPART FROM THE BOARD'S USUAL PRACTICE TO INCLUDE SUCH PERSONS IN A PRODUCTION UNIT. IT IS CLEAR THAT THE QUALITY CONTROL PERSONNEL IN THIS PLANT SHARE A COMMUNITY OF INTEREST WITH THE PLANT EMPLOYEES ARE THEREFORE INCLUDED IN THE BARGAINING UNIT DESCRIBED HEREIN.

5. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT AJAX, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON SEPTEMBER 5TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION, AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

I DISSENT FROM THE DECISION OF THE MAJORITY WHEREIN THEY FIND THAT THE PERSONS EMPLOYED AS QUALITY CONTROL LABORATORY TECHNICIANS AND THE COMPOUNDER SHOULD BE INCLUDED IN THE BARGAINING UNIT.

I AGREE WITH THE SUBMISSIONS OF COUNSEL FOR THE COMPANY THAT THESE PERSONS SHOULD BE EXCLUDED BECAUSE THERE IS A LACK OF COMMUNITY OF INTEREST BETWEEN THEM AND THE OTHER PERSONS IN THE BARGAINING UNIT. I DO NOT AGREE, HOWEVER, THAT THEY SHOULD BE EXCLUDED AS EXERCISING EITHER MANAGERIAL FUNCTIONS OR FUNCTIONS WHICH ARE CONFIDENTIAL WITH RESPECT TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

HAVING REGARD TO THE EVIDENCE AS CONTAINED IN THE EXAMINER'S REPORT AND ITS APPLICATION TO SUCH MATTERS AS:

- (A) THE RESPONDENT'S ORGANIZATION AND ADMINISTRATION;
- (B) THE LACK OF INTERMINGLING AND INTERCHANGE;
- (C) THE GEOGRAPHIC LOCATION OF THEIR WORK;
- (D) THE KIND OF SKILLS, RESPONSIBILITIES AND INTERCHANGEABILITY;
- (E) THE NATURE AND PLACE OF THEIR WORK; AND
- (F) THE CONDITIONS OF THEIR EMPLOYMENT,

I WOULD HAVE FOUND THAT THE QUALITY CONTROL LABORATORY TECHNICIANS AND THE COMPOUNDER, IN THE CIRCUMSTANCES OF THIS CASE, DID NOT HAVE A COMMUNITY OF INTEREST WITH THE OTHER EMPLOYEES IN THE BARGAINING UNIT, AND ACCORDINGLY I WOULD HAVE EXCLUDED THEM FROM SUCH BARGAINING UNIT.

15292-68-R: THE ASSOCIATION OF PUBLIC HEALTH INSPECTORS WATERLOO COUNTY HEALTH UNIT (APPLICANT) v. WATERLOO COUNTY HEALTH UNIT (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: GEORGE CHRIS, DAVE BIRNSTIHL, BOB YOUNG FOR THE APPLICANT, AND NO ONE APPEARING FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 20, 1969.

* * *

3. THE APPLICANT SEEKS A BARGAINING UNIT COMPRISED OF "ALL DULY ACCREDITED PUBLIC HEALTH INSPECTORS OF THE RESPONDENT AT WATERLOO COUNTY, SAVE AND EXCEPT CHIEF INSPECTOR AND PERSONS ABOVE THE RANK OF CHIEF INSPECTOR." THE APPLICANT ALSO ADVISED THE BOARD THAT IN ADDITION TO THE PROFESSIONAL STAFF AND THE PUBLIC HEALTH INSPECTORS, THE RESPONDENT EMPLOYS DENTAL HYGIENISTS, OFFICE AND CLERICAL STAFF AND MAINTENANCE STAFF. THERE IS ALSO A GROUP OF NURSES WHO ARE PRESENTLY CERTIFIED AS A SEPARATE BARGAINING UNIT.

4. IT IS INCUMBENT ON THE BOARD TO DETERMINE WHETHER THE BARGAINING UNIT APPLIED FOR IS APPROPRIATE. WE NOTE FROM A HISTORY OF PREVIOUS CERTIFICATION APPLICATIONS THAT THERE ARE NO BARGAINING UNITS COMPOSED SOLELY OF PUBLIC HEALTH INSPECTORS NOR ARE THERE ANY COLLECTIVE AGREEMENTS ON FILE WITH THE BOARD INDICATING THAT PUBLIC HEALTH INSPECTORS HAVE BARGAINED BY THEMSELVES. IN FACT THE BOARD'S RECORDS INDICATE THAT PUBLIC HEALTH INSPECTORS COMMONLY BARGAIN IN BARGAINING UNITS WHICH INCLUDE MANY OTHER TYPES OF EMPLOYEES.

5. IN ADDITION TO THE HISTORY OF BARGAINING IF WE WERE TO CERTIFY THE APPLICANT IN THIS SITUATION IT WOULD BE OPEN TO THE DENTAL HYGIENISTS OR THE MAINTENANCE AND JANITORIAL EMPLOYEES TO MAKE SEPARATE APPLICATIONS FOR CERTIFICATION WHICH WOULD RESULT IN A MULTIPLICITY OF BARGAINING UNITS. IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE WE DO NOT FEEL THAT THE FRAGMENTATION OF THESE EMPLOYEES INTO SEPARATE BARGAINING UNITS WOULD BE CONDUCIVE TO INDUSTRIAL STABILITY.

6. WE WISH TO FURTHER POINT OUT TO THE APPLICANT THE PROVISIONS IN THE CONSTITUTION LIMITING MEMBERSHIP TO PUBLIC HEALTH INSPECTORS IN THE EVENT OF A FURTHER APPLICATION. WE SPECIFICALLY REFER THE APPLICANT TO LONDON ASSOCIATION OF PAINTING AND DECORATING JOURNEYMEN AND GAYMER AND OULTRAM 1954 CCH, LLR, TRANSFER BINDER 149-154 #17,073; C.L.S. 76-429; OTTAWA PRINTING CRAFTS UNION AND THE OTTAWA CITIZEN, A DIVISION OF THE SOUTHAM COMPANY LIMITED (OTTAWA) AND OTTAWA TYPOGRAPHICAL UNION LOCAL NO. 102 OF INTERNATIONAL TYPOGRAPHICAL UNION 1954 CCH, LLR TRANSFER BINDER 149-154 #17,076; C.L.S. 76-431.

7. FOR THE FOREGOING REASONS THE APPLICATION IS DISMISSED.

15362-68-R: BAKERY AND CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264 (APPLICANT) V. THE GREAT ATLANTIC & PACIFIC TEA COMPANY, LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
P.J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: M. J. SOMERVILLE, N. GROCUTT AND D. RICCI FOR THE APPLICANT, D. CHURCHILL-SMITH AND G. L. CASSADAY FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 7, 1969.

• • •

2. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE APPLICANT APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT IN ITS NATIONAL PRODUCE DIVISION IN METROPOLITAN TORONTO SAVE AND EXCEPT OFFICE STAFF AND CERTAIN OTHER EXCLUDED CLASSIFICATIONS.

3. THE RESPONDENT PROPOSED THAT THE BARGAINING UNIT BE RESTRICTED TO ITS LOCATION AT 135 LAUGHTON AVENUE, TORONTO.

4. AT THE HEARING OF THIS APPLICATION, BECAUSE IT APPEARED THAT THERE WAS MORE THAN ONE LOCATION AT WHICH THE EMPLOYEES WERE EMPLOYED, THE PARTIES AGREED THAT THE BARGAINING UNIT BE DESCRIBED AS "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS NATIONAL PRODUCE DIVISION AT 135 LAUGHTON AVENUE IN METROPOLITAN TORONTO, SAVE AND EXCEPT ASSISTANT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANKS OF ASSISTANT FOREMAN AND FORELADY, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD."

5. THE APPLICANT BY LETTER DATED DECEMBER 4TH, 1968 REQUESTED, FOR REASONS THEREIN CONTAINED, THAT THE BOARD CERTIFY THE APPLICANT FOR ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO.

6. IN ITS LETTER, THE APPLICANT ALLEGED, INTER ALIA, THAT THE EMPLOYEES OF THE RESPONDENT IN ITS NATIONAL PRODUCE DIVISION FOR WHICH IT SOUGHT TO BE CERTIFIED AS BARGAINING AGENT WERE EMPLOYED AT ONLY ONE LOCATION IN METROPOLITAN TORONTO.

7. THE RESPONDENT IN ITS LETTER DATED DECEMBER 12TH, 1968 AGREED THAT THE APPLICANT'S ALLEGATION WAS CORRECT AND THAT ON THE DATE OF THE APPLICATION THERE WAS ONLY ONE LOCATION IN METROPOLITAN TORONTO WHERE EMPLOYEES IN THE BARGAINING UNIT WERE EMPLOYED.

8. THE USUAL PRACTICE OF THE BOARD WHERE THERE IS ONLY ONE LOCATION IN METROPOLITAN TORONTO WHERE EMPLOYEES ARE EMPLOYED ON THE DATE THE APPLICATION WAS MADE IS TO CERTIFY THE APPLICANT FOR ALL EMPLOYEES AT METROPOLITAN TORONTO.

9. IT IS READILY APPARENT THAT THE BOARD AND THE APPLICANT MISCONSTRUED THE RESPONDENT'S STATEMENTS AND WRONGLY ASSUMED THAT THERE WAS MORE THAN ONE LOCATION IN METROPOLITAN TORONTO WHERE WAREHOUSE EMPLOYEES OF THE RESPONDENT'S NATIONAL PRODUCE DIVISION WERE EMPLOYED. ACCORDINGLY, THE BOARD IS OF OPINION THAT THE APPLICANT SHOULD NOT BE BOUND BY ITS AGREEMENT TO RESTRICT THE GEORGAPHIC LOCATION OF THE BARGAINING UNIT IN THESE SPECIAL CIRCUMSTANCES.

10. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

11. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS NATIONAL PRODUCE DIVISION AT METROPOLITAN TORONTO, SAVE AND EXCEPT ASSISTANT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANKS OF ASSISTANT FOREMAN AND FORELADY, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

12. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON NOVEMBER 28TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

13. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

15405-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC
(APPLICANT) v. WITTICH'S BREAD LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
P.J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: A.S. GLEASON FOR THE APPLICANT,
B.W. BINNING, IRVIN WITTICH AND D. WITTICH FOR THE RESPONDENT.

DECISION OF J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER

P.J. O'KEEFFE: JANUARY 22, 1969.

* * *

2. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE APPLICANT APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR ALL DRIVER-SALESMEN OF THE RESPONDENT AT AYTON. THE RESPONDENT PROPOSED THAT THE UNIT INCLUDE ALL DRIVER-SALESMEN OF THE RESPONDENT IN ONTARIO. THE PARTIES AGREED AT THE HEARING THAT THE FACTS OF THIS CASE ARE AS FOLLOWS. THE RESPONDENT OPERATES THE BUSINESS OF MANUFACTURING AND WHOLESALING BAKERY GOODS AND EMPLOYS 14 DRIVER-SALESMEN AT AYTON. IN ADDITION, THE RESPONDENT EMPLOYS A FURTHER 5 DRIVER-SALESMEN AT KITCHENER. THE RESPONDENT'S PRODUCTS ARE TRANSPORTED FROM AYTON TO KITCHENER, A DISTANCE OF APPROXIMATELY FIFTY MILES, BY HIGHWAY TRANSPORT. IN KITCHENER, THE GOODS ARE TRANSFERRED FROM THE TRANSPORT TRUCK TO THE DELIVERY TRUCKS OPERATED BY THE DRIVER-SALESMEN. NO MEMBER OF MANAGEMENT IS LOCATED IN KITCHENER AND THE 5 KITCHENER DRIVER-SALESMEN ARE SUBJECT TO THE SAME SUPERVISION AS THE 14 DRIVER-SALESMEN LOCATED AT AYTON. THE EMPLOYEES FROM ONE GROUP RELIEVE EMPLOYEES IN THE OTHER ON HOLIDAYS WHICH OCCUR APPROXIMATELY EVERY FOUR MONTHS. THE WORKING CONDITIONS OF THE TWO GROUPS OF EMPLOYEES ARE ALSO SIMILAR.

3. THE RESPONDENT ARGUED THAT SINCE THE TWO GROUPS OF EMPLOYEES ARE TREATED AS A SINGLE GROUP BY MANAGEMENT, THEIR INTERESTS ARE THEREFORE THE SAME AND THEY SHOULD BE TREATED AS ONE BARGAINING UNIT.

4. IT IS A WELL ESTABLISHED PRACTICE OF THE BOARD THAT WHERE A SINGLE EMPLOYEE IS IN A DIFFERENT GEOGRAPHIC AREA THAN OTHER EMPLOYEES IN THE BARGAINING UNIT, THE BOARD WILL INCLUDE THAT SINGLE EMPLOYEE IN THE BARGAINING UNIT IF THAT EMPLOYEE IS A MEMBER OF THE APPLICANT UNION. OTHERWISE, SUCH EMPLOYEE WOULD BE DEPRIVED OF THE RIGHT TO BE REPRESENTED BY A TRADE UNION SINCE BARGAINING UNITS MUST BE COMPRISED OF MORE THAN ONE EMPLOYEE. HOWEVER, IF THE LONE EMPLOYEE AT THE DIFFERENT LOCATION IS NOT A UNION MEMBER, IT IS NOT THE PRACTICE OF THE BOARD TO INCLUDE SUCH PERSON IN THE BARGAINING UNIT WITH OTHER EMPLOYEES AT A DIFFERENT LOCATION. IN THIS CASE, HOWEVER, THERE ARE FIVE EMPLOYEES LOCATED AT KITCHENER AND THEIR NUMBER IS SUFFICIENT TO PERMIT THEM TO COMprise A SEPARATE BARGAINING UNIT.

5. IT IS NOT THE BOARD'S PRACTICE TO INCLUDE EMPLOYEES IN WIDELY SEPARATED LOCALITIES IN THE SAME BARGAINING UNIT UNLESS THERE ARE COMPELLING REASONS FOR DOING SO, SUCH AS REGULAR INTERCHANGE OF EMPLOYEES. IN THIS CASE, WHILE THERE ARE ISOLATED INSTANCES OF INTERCHANGE TO PERMIT RELIEF IN THE EVENT OF HOLIDAYS, THIS PRACTICE CANNOT BE CHARACTERIZED AS REGULAR INTERCHANGE WHICH WOULD COMPEL THE BOARD TO INCLUDE ONE GROUP OF EMPLOYEES IN THE SAME BARGAINING UNIT WITH THE OTHER. THE FACT THAT IT WOULD BE IMPRACTICAL, BECAUSE OF DISTANCE, TO ASSIGN A KITCHENER EMPLOYEE

TO AN AYTON ROUTE ON A PERMANENT BASIS OR TO REGULARLY REQUEST THAT AN AYTON EMPLOYEE BE TEMPORARILY ASSIGNED, ON A DAY TO DAY BASIS, TO A KITCHENER ROUTE, MILITATES AGAINST THE FINDING THAT THE TWO GROUPS OF EMPLOYEES SHARE A COMMUNITY OF INTEREST SUFFICIENT TO CAUSE THE BOARD TO FIND THEY FORM ONE APPROPRIATE BARGAINING UNIT. SINCE THE RESPONDENT FOUND IT REASONABLE AND EXPEDIENT TO OPERATE THE KITCHENER ROUTES ON A REGULAR BASIS, WITH EMPLOYEES LOCATED IN THAT LOCALITY, WE FIND THIS FACTOR A COMPELLING REASON TO FOLLOW THE BOARD'S USUAL PRACTICE OF CONFINING THE GEOGRAPHIC AREA OF BARGAINING UNITS TO EMPLOYEES IN A SINGLE MUNICIPALITY. WHERE IT IS NOT PRACTICAL, FROM THE EMPLOYER'S OR THE EMPLOYEE'S POINT OF VIEW, TO INTERCHANGE TWO GROUPS OF EMPLOYEES ON A DAY TO DAY BASIS, THERE MUST BE OTHER COMPELLING REASONS TO CAUSE THE BOARD TO FIND THAT THE TWO GROUP CONSTITUTE A SINGLE BARGAINING UNIT. THERE IS NOTHING THEREFORE BEFORE THE BOARD WHICH WOULD CAUSE THE BOARD TO DEPART FROM ITS REGULAR PRACTICE OF DETERMINING THAT EMPLOYEES AT ONE LOCALITY CONSTITUTE A UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING. THE BOARD'S DETERMINATION IN THIS REGARD CAN NOT MATERIALLY AFFECT THE RESPONDENT'S PRACTICE WITH RESPECT TO THE MANNER IN WHICH THE TWO GROUPS OF EMPLOYEES ARE SUPERVISED.

6. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

7. THE BOARD FURTHER FINDS THAT ALL DRIVER-SALESMEN OF THE RESPONDENT EMPLOYED AT AYTON IN THE COUNTY OF GREY, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON DECEMBER 6TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER J. E. C. ROBINSON:

JANUARY 22, 1969.

I DISSENT FROM THE DECISION OF THE MAJORITY. THE BARGAINING UNIT SUGGESTED BY THE APPLICANT WAS:- "ALL DRIVER-SALESMEN OF THE RESPONDENT AT AYTON". THE BARGAINING UNIT SUGGESTED BY THE RESPONDENT WAS:- "ALL DRIVER-SALESMEN OF THE RESPONDENT SAVE AND EXCEPT MANAGER AND THOSE ABOVE THE RANK OF MANAGER".

THE RESPONDENT MADE REPRESENTATIONS THAT THERE WERE 13 DRIVER-SALESMEN AT AYTON AND 5 DRIVER-SALESMEN AT KITCHENER. THE UNION SUBMITTED DOCUMENTARY EVIDENCE SIGNIFYING MEMBERSHIP FOR 8 PERSONS IN THE APPLICANT UNION, ALL OF WHO WERE LOCATED IN AYTON ON THE DATE OF APPLICATION. IT IS CLEAR, THEREFORE, THAT IF THE DRIVER-SALESMEN AT BOTH AYTON AND KITCHENER ARE FOUND BY THIS BOARD TO APPROPRIATELY CONSTITUTE ONE BARGAINING UNIT, THE UNION'S APPLICATION MUST BE DISMISSED; IF, ON THE OTHER HAND, THE BOARD FINDS THAT THERE SHOULD APPROPRIATELY BE 2 BARGAINING UNIT, I.E., (1) DRIVER-SALESMEN EMPLOYED AT AYTON AND (2) DRIVER-SALESMEN EMPLOYED AT KITCHENER, THEN THE APPLICANT WILL BE CERTIFIED FOR THE UNIT OF DRIVER-SALESMEN EMPLOYED AT AYTON.

THE EVIDENCE PRESENTED BY THE RESPONDENT IS UNCONTRADICTED. IT WAS TO THE EFFECT THAT A TRUCK-VAN LEFT AYTON LOADED WITH PRODUCTS OF THE RESPONDENT AND DROVE TO A VACANT FIELD IN KITCHENER. FROM THERE, THE DRIVER-SALESMEN IN THE KITCHENER AREA PICK UP THEIR PRODUCTS FROM THE TRUCK-VAN AND PROCEEDED TO SELL THESE GOODS ON CERTAIN ROUTES IN THE KITCHENER AREA.

THE EVIDENCE IS FURTHER THAT ALL DRIVER-SALESMEN BOTH AT AYTON AND AT KITCHENER WERE TREATED ALIKE AND ALL ATTENDED SALES MEETINGS, ETC. AT THE RESPONDENT'S LOCATION AT AYTON. IN ADDITION, THE ONE SUPERVISOR IS LOCATED AT AYTON AND THE KITCHENER DRIVERS RECEIVE DIRECT SUPERVISION FROM AYTON. APPARENTLY ALL ARE TREATED TOGETHER AS ONE GROUP.

IN ADDITION, THERE IS EVIDENCE THAT THERE IS INTERCHANGE OF THE DRIVER-SALESMEN BETWEEN AYTON AND KITCHENER AND THAT EVERY 4 MONTHS, DRIVER-SALESMEN RECEIVE HOLIDAYS, AND ARE INTERCHANGED BETWEEN THE 2 MUNICIPALITIES TO COVER THOSE ON VACATION.

BASED ON THE REPRESENTATIONS MADE TO THE BOARD, I BELIEVE THAT A RATIONAL ARGUMENT MAY BE MADE THAT THE RESPONDENT HAD ONLY ONE LOCATION, THAT BEING AYTON, AND THAT THE FACT THAT A TRUCK-VAN MERELY BROUGHT GOODS TO KITCHENER FOR DELIVERY TO THE DRIVER-SALESMEN, WAS SOMETHING DONE MERELY FOR ECONOMIC REASONS AND FOR CONVENIENCE, AND DID NOT CREATE ANY NEW LOCATION FOR THE COMPANY AT KITCHENER.

IN THE USRICO LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1967, P. 526, WHICH DEALT WITH A PLANT UNIT, THE BOARD SAID AS FOLLOWS AT P. 529:

SOME OF THE FACTORS WHICH THE BOARD TAKES INTO CONSIDERATION WHICH DETERMINE THE APPROPRIATENESS OF BARGAINING UNITS, WHICH INCLUDE EMPLOYEES AT MORE THAN ONE LOCATION MAY BE ENUMERATED AS FOLLOWS:

1. COMMUNITY OF INTEREST OF EMPLOYEES;
2. CENTRALIZATION OF MANAGERIAL AUTHORITY;
3. THE ECONOMIC FACTOR OF ONE BARGAINING UNIT;
4. SOURCE OF WORK.

WHEN ALL THESE FACTORS HAVE BEEN TAKEN INTO CONSIDERATION THE BOARD IS ABLE TO DETERMINE WHETHER OR NOT THERE IS AN INTEGRATED OPERATION WHICH INDICATES THE APPROPRIATENESS OF ONE INCLUSIVE BARGAINING UNIT.

IF THESE TESTS ARE TO BE APPLIED IN THE INSTANT CASE, I AM UNABLE TO FIND ANY RATIONAL CONCLUSION FOR THE RESULT WHICH IS REACHED BY MY COLLEAGUES IN THE MAJORITY DECISION.

IN THE RECENT CASE OF LAIDLAW TRANSPORT LIMITED, BOARD FILE #15352-68-R, THE TEAMSTERS UNION APPLIED TO THE BOARD FOR CERTIFICATION FOR ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF SOUTHWOLD TOWNSHIP, SAVE AND EXCEPT CERTAIN MANAGERIAL CLASSIFICATIONS. THE COMPANY ARGUED THAT THE APPLICATION WAS UNTIMELY IN THAT THESE EMPLOYEES WERE COVERED BY A SUBSISTING COLLECTIVE AGREEMENT WITH THE CANADIAN TRANSPORTATION WORKERS' UNION NO. 188, THE RELEVANT PORTION OF THE RECOGNITION CLAUSE OF THE AGREEMENT READING AS FOLLOWS:

THE COMPANY RECOGNIZES THE UNION AS THE SOLE AND EXCLUSIVE BARGAINING AGENT FOR ITS EMPLOYEES CLASSIFIED AS DRIVERS, DOCKMEN, CHECKERS, MAINTENANCE MEN AND MECHANICS EMPLOYED AT OR OUT OF THE COMPANY'S TERMINAL OR TERMINALS AT THE CITY OF LONDON AND IN THE COUNTY OF MIDDLESEX.

THE APPLICANT SOUGHT CERTIFICATION FOR 2 EMPLOYEES OF THE RESPONDENT WORKING AT THE FORD PLANT LOCATED IN SOUTHWOLD TOWNSHIP, IN THE COUNTY OF ELGIN. THESE 2 EMPLOYEES REPORTED DAILY TO THE FORD PLANT IN SOUTHWOLD TOWNSHIP BUT WERE IN REGULARLY RADIO COMMUNICATION WITH THE RESPONDENT'S TERMINAL AT LONDON. IN ADDITION, THEY WORKED UNDER THE SUPERVISION OF AND RECEIVED THEIR INSTRUCTIONS FROM THE RESPONDENT'S DISPATCHER LOCATED AT THE LONDON TERMINAL. IN OTHER RESPECTS, THEY WERE TREATED ALIKE AS THE EMPLOYEES AT LONDON.

THE BOARD, IN FINDING THAT THESE EMPLOYEES WERE COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT AND DISMISSING THE APPLICATION, SAID:

THE ONLY WAY IN WHICH THE TWO EMPLOYEES WHO ARE THE SUBJECT OF THIS APPLICATION CAN BE DISTINGUISHED

FROM THOSE EMPLOYEES WORKING OUT OF THE LONDON TERMINAL IS THAT THEY DO NOT REPORT TO THE TERMINAL ON A DAILY BASIS. THE TWO EMPLOYEES HAVE THE SAME SUPERVISION, RECEIVE THE IDENTICAL BENEFITS UNDER THE COLLECTIVE AGREEMENT ...

IT IS ALSO INTERESTING TO NOTE SOME OF THE OTHER BARGAINING UNITS GRANTED BY THIS BOARD, ALBEIT THAT SOME OF THE FOLLOWING DESCRIPTIONS WERE GIVEN ON AGREEMENT OF THE PARTIES:

- (1) BERTRAND & FRERE CONSTRUCTION Co. LTD., BOARD FILE No. 10347-65-R. THE APPLICANT HEREIN WAS THE TEAMSTERS, LOCAL 230 AND THE BARGAINING UNIT WAS DESCRIBED IN TERMS OF:

ALL EMPLOYEES OF THE RESPONDENT WORKING AT AND OUT OF L'ORIGINAL AND OTTAWA, ...

THE UNIT INVOLVED DRIVERS, MECHANICS, OPERATORS, ETC. AND WAS GIVEN HAVING REGARD TO THE AGREEMENT OF THE PARTIES.

- (2) WESTON BAKERIES LIMITED, BOARD FILE No. 12181-66-R. THE APPLICANT HEREIN WAS THE TEAMSTERS, LOCAL 647 AND THE BARGAINING UNIT WAS DESCRIBED IN TERMS OF:

ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS WOODSTOCK AND LONDON BRANCHES ...

THE UNIT INVOLVED DRIVER SALESMEN AND ONE SHIPPER AND RESULTED FROM A VOTING CONSTITUENCY BASED UPON AN EXISTING BARGAINING UNIT IN A COLLECTIVE AGREEMENT.

- (3) WM. L. BARNES COMPANY, LTD., BOARD FILE No. 13572-67-R. THE APPLICANT HEREIN WAS THE TEAMSTERS, LOCAL 879 AND THE BARGAINING UNIT WAS DESCRIBED IN TERMS OF:

ALL EMPLOYEES OF THE RESPONDENT AT WATERDOWN AND MILTON ...

THE UNIT INVOLVED LABOURERS AND DRIVERS AND WAS GIVEN HAVING REGARD TO THE AGREEMENT OF THE PARTIES.

- (4) TEESWATER CREAMERY LIMITED, BOARD FILE No. 13117-67-R. THE APPLICANT HEREIN WAS THE TEAMSTERS, LOCAL 647 AND THE BARGAINING UNIT WAS DESCRIBED IN TERMS OF:

ALL EMPLOYEES OF THE RESPONDENT AT
TEESWATER AND MILDAY ...

THE UNIT INVOLVED MAINLY DRIVERS AND LABOURERS.

- (5) CURRAN & BRIGGS READY-MIX LIMITED, BOARD FILE NO.
13680-67-R, THE APPLICANT HEREIN WAS THE
TEAMSTERS, LOCAL 230 AND THE BARGAINING UNIT WAS
DESCRIBED IN TERMS OF:

ALL EMPLOYEES OF THE RESPONDENT AT OSHAWA
AND AJAX, ...

THE UNIT INVOLVED MAINLY DRIVERS AND MECHANICS.

- (6) ROYAL OAK DAIRY LIMITED, BOARD FILE NO. 13338-67-R
THE APPLICANT HEREIN WAS THE RETAIL, WHOLESALE
UNION AND THE BARGAINING UNIT WAS DESCRIBED IN
TERMS OF:

ALL OFFICE EMPLOYEES OF THE RESPONDENT AT
HAMILTON AND BURLINGTON ...

THE UNIT INVOLVED OFFICE PERSONNEL AND WAS GIVEN
HAVING REGARD TO THE AGREEMENT OF THE PARTIES.

IN VIEW OF THE FACT THAT ALL WORK EMANATED FROM AND WAS
DIRECTED BY THE COMPANY AT AYTON, I WOULD HAVE FOUND THE APPROPRIATE
UNIT TO BE:

ALL DRIVER-SALESMEN OF WITTICH'S BREAD LIMITED
EMPLOYED AT AYTON AND KITCHENER, SAVE AND EXCEPT
MANAGER AND THOSE ABOVE THE RANK OF MANAGER ...

THAT BEING SO, I WOULD HAVE FOUND ON THE BASIS OF THE EVIDENCE BEFORE
ME THAT THERE WAS LESS THAN 45 PER CENT OF THE EMPLOYEES IN THE BAR-
GAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WHO WERE MEMBERS
OF THE APPLICANT AND WOULD HAVE DISMISSED THE APPLICATION.

15440-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE
SARNIA BOARD OF EDUCATION (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: F. L. TAYLOR FOR THE APPLICANT, F. G.
HAMILTON AND K. TURTON FOR THE RESPONDENT, G. McCALL FOR THE
OBJECTORS.

DECISION OF THE BOARD:

JANUARY 6, 1969.

• • •

3. THE APPLICANT ON DECEMBER 9TH, 1968 FILED AN APPLICATION FOR CERTIFICATION FOR A BARGAINING UNIT COMPOSED OF OFFICE AND CLERICAL EMPLOYEES IN THE EMPLOY OF THE RESPONDENT. AS OF THAT DATE THE RESPONDENT WAS AN EXISTING ENTITY AND HAD EMPLOYEES IN ITS EMPLOY.

4. THE SECONDARY SCHOOLS AND BOARD OF EDUCATION ACT R.S.O. 1960 c. 362 WAS AMENDED BY THE SECONDARY SCHOOLS AND BOARD OF EDUCATION AMENDMENT ACT 1968, STATUTES OF ONTARIO c. 122. SECTION 8 OF THE LATTER ACT AMENDS THE FORMER ACT BY ADDING THERETO PART VI TITLED DIVISIONAL BOARDS OF EDUCATION. BY THE PROVISIONS OF PART VI, ON AND AFTER JANUARY 1ST, 1969, EVERY CITY AND COUNTY BECOMES A SCHOOL DIVISION. FURTHER, PART VI REQUIRES THE ESTABLISHMENT OF A DIVISIONAL BOARD OF EDUCATION IN EACH SCHOOL DIVISION. SECTION 84(2)(A) PART VI PROVIDES THAT AS OF JANUARY 1ST, 1969 ALL BOARDS HAVING JURISDICTION WHOLLY OR PARTLY IN A SCHOOL DIVISION ARE DISSOLVED.

5. THE HEARING OF THE APPLICATION TOOK PLACE ON JANUARY 3RD, 1969. BY THAT DATE THE RESPONDENT NAMED IN THE APPLICATION HAD BEEN DISSOLVED BY VIRTUE OF SECTION 84(2)(A) OF PART VI REFERRED TO ABOVE. IN THESE CIRCUMSTANCES, THERE IS NEITHER AN EMPLOYER NOR A UNIT OF EMPLOYEES FOR WHOM THE APPLICANT CAN BE CERTIFIED AS BARGAINING AGENT.

6. THE APPLICATION ACCORDINGLY IS TERMINATED.

15467-68-R: THE CANADIAN UNION OF CONSTRUCTION WORKERS (APPLICANT) v. MANOR CARPENTERS (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: J. J. BLAIS, J. MEIORIN, R. BURDEN AND O. ONGARO FOR THE APPLICANT, NO ONE FOR THE RESPONDENT.

DECISION OF THE BOARD:

JANUARY 13, 1969.

• • •

3. THE APPLICANT HAS NOT ENTERED INTO ANY COLLECTIVE AGREEMENTS PERTAINING TO THE CONSTRUCTION INDUSTRY. FOR THAT MATTER, THE APPLICANT HAS NOT ENTERED INTO ANY COLLECTIVE AGREEMENTS. IN THESE CIRCUMSTANCES, THE BOARD FINDS THAT THE APPLICANT IS NOT A TRADE UNION "THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO THE CONSTRUCTION INDUSTRY" WITHIN THE MEANING OF SECTION 90(B) OF THE LABOUR RELATIONS ACT. (SEE

BEN BRUINSMA AND SONS LIMITED CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY 1964, p. 647). THE APPLICATION THEREFORE IS NOT ONE FALLING WITHIN SECTION 92 OF THE LABOUR RELATIONS ACT.

4. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT COMPOSED OF ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN BOARD GEOGRAPHIC AREA #8. THE APPLICANT AT THE PRESENT TIME, HOWEVER, IS NOT A TRADE UNION THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO THE CRAFT OF CARPENTERS OR FOR THAT MATTER ANY OTHER CONSTRUCTION CRAFT. THE APPLICANT THEREFORE HAS NOT MET THE REQUIREMENTS OF SECTION 6(2) OF THE ACT WHICH WOULD ENTITLE IT TO CERTIFICATION FOR A CRAFT UNIT.

5. THE BOARD IN PREVIOUS DECISIONS HAS EXPRESSED ITS CONCERN ABOUT BARGAINING UNITS OF CONSTRUCTION EMPLOYEES BEING ALL INCLUSIVE AS THEY ARE WHEN DESCRIBED IN TERMS OF "ALL EMPLOYEES" BECAUSE SUCH UNITS MAY WELL LEAD TO JURISDICTIONAL DISPUTES. AS A GENERAL RULE THEREFORE, THE BOARD HAS AVOIDED "ALL EMPLOYEE" UNITS IN THE CONSTRUCTION INDUSTRY AND HAS DESCRIBED UNITS IN TERMS OF THE TRADES ON THE JOB AS OF THE DATE OF THE MAKING OF THE APPLICATION. (SEE WINTER & SONS CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY 1967, p. 889). IN THE INSTANT CASE, AT THE RELEVANT TIME THE RESPONDENT ONLY HAD IN ITS EMPLOY CARPENTERS AND CARPENTERS' APPRENTICES. THE BOARD ACCORDINGLY, PURSUANT TO SECTION 6(1) OF THE ACT, FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON DECEMBER 20TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

15476-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) v. NORAK STEEL (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: A. MACISAAC FOR THE APPLICANT, J. P. SANDERSON AND F. OBER FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 23, 1969.

• • •

3. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN BOARD GEOGRAPHIC AREA No. 29.

4. THE APPLICANT AND THE RESPONDENT ARE PARTIES TO A COLLECTIVE AGREEMENT EFFECTIVE FROM MAY 25TH, 1967 TO APRIL 30TH, 1969 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE. THE RECOGNITION CLAUSE OF THE AGREEMENT PROVIDES THAT THE RESPONDENT RECOGNIZES THE APPLICANT AS THE BARGAINING AGENT FOR ALL EMPLOYEES DEFINED IN THE AGREEMENT. THE SCOPE CLAUSE PROVIDES THAT THE AGREEMENT COVERS ALL EMPLOYEES OF THE RESPONDENT WHO DO WORK NORMALLY PERFORMED BY IRONWORKERS. THE TERRITORIAL JURISDICTIONS OF VARIOUS LOCALS OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS ARE SET OUT IN THE AGREEMENT. THE TERRITORIAL JURISDICTION OF THE APPLICANT LOCAL UNION 721 IS DESCRIBED AS THE DISTRICT OF MUSKOKA AND ALL OF THE COUNTIES OF DUFFERIN, DURHAM, HALIBURTON, NORTHUMBERLAND, ONTARIO, PEEL, PETERBOROUGH, PRINCE EDWARD, SIMCOE, VICTORIA AND YORK, THE TOWNSHIPS OF MARMORA, RAWDON, SIDNEY AND THURLOW IN THE COUNTY OF HASTINGS AND THE PREMISES OF THE FORD MOTOR COMPANY IN THE COUNTY OF HALTON. THE TERRITORIAL JURISDICTION OF LOCAL UNION 765 IS DESCRIBED AS ALL OF THE COUNTIES OF ADDINGTON, CARLETON, DUNDAS, FRONTENAC, GLENGARRY, GRENVILLE, LANARK, LEEDS, LENNOX, PRESCOTT, RENFREW, RUSSELL, STORMONT AND ALL OF THE COUNTY OF HASTINGS EXCEPT THE TOWNSHIPS OF MARMORA, RAWDON, SIDNEY AND THURLOW. THE TERRITORIAL JURISDICTION OF LOCAL UNION 765, ENCOMPASSES ALL OF THE GEOGRAPHIC AREA FOR WHICH THE APPLICANT LOCAL 721 IS SEEKING CERTIFICATION.

5. ARTICLE 6 OF THE COLLECTIVE AGREEMENT PROVIDES THAT THE RESPONDENT HAS THE RIGHT TO SEND JOURNEYMEN MEMBERS OF THE IRONWORKERS UNION ANYWHERE IN THE PROVINCE OF ONTARIO WHERE WORK IS BEING OR IS TO BE PERFORMED. THE LOCAL UNION OF THE IRONWORKERS HAVING JURISDICTION OVER THE TERRITORY WHERE THE WORK IS BEING PERFORMED, HOWEVER, HAS THE RIGHT TO SUPPLY AT LEAST 50 PER CENT OF THE IRONWORKERS EMPLOYED ON THE JOB, PROVIDED IT HAS SUFFICIENT QUALIFIED MEMBERS

AVAILABLE. THE RESPONDENT, NEVERTHELESS, IS ALLOWED UNDER THE AGREEMENT TO SEND ONE BASIC RAISING GANG PER PROJECT, CONSISTING OF FOUR JOURNEYMAN AND A PUSHER, INTO THE TERRITORY OF THE LOCAL UNION FOR A PERIOD NOT EXCEEDING THREE WORKING DAYS. THE 50 PER CENT RULE ONLY BECOMES OPERATIVE AT THE START OF THE FOURTH WORKING DAY. ARTICLE 15 OF THE AGREEMENT PROVIDES THAT IRONWORKERS SENT BY THE RESPONDENT TO WORK IN A TERRITORY OTHER THAN THE ONE IN WHICH THEIR LOCAL UNION IS LOCATED ARE TO RECEIVE THE COMBINED WAGE RATE, WELFARE AND PENSION CONTRIBUTIONS AND BOARD ALLOWANCE OF EITHER THE LOCAL IN WHICH THE PROJECT IS LOCATED, OR THEIR OWN LOCAL, WHICHEVER IS HIGHER. ARTICLE 17 PROVIDES FOR TRAVELLING AND TRANSPORTATION COSTS WHEN MEMBERS OF LOCAL 721 ARE SENT TO A JOB BEYOND A TWENTY-FIVE MILE RADIUS OF TORONTO CITY HALL.

6. AS OF DECEMBER 16TH, 1968, THERE WERE NINE IRONWORKERS EMPLOYED ON THE ST. LAWRENCE COLLEGE OF APPLIED ARTS AND TECHNOLOGY PROJECT LOCATED IN THE TOWNSHIP OF KINGSTON IN THE COUNTY OF FRONTENAC. OF THE NINE, SEVEN WERE SENT TO THE JOB SITE AT THE REQUEST OF THE RESPONDENT BY THE APPLICANT LOCAL UNION 721. ONE OF THE REMAINING TWO IRONWORKERS HAS BEEN EMPLOYED BY THE RESPONDENT FOR SOME THREE YEARS IN VARIOUS LOCATIONS. THE OTHER WAS HIRED ON THE PROJECT BY THE RESPONDENT THROUGH THE OFFICE OF LOCAL UNION 765. BOTH OF THE LATTER TWO EMPLOYEES ARE MEMBERS OF LOCAL UNION 765 AND ARE NOT MEMBERS OF LOCAL UNION 721.

7. IT IS CLEAR FROM THE ABOVE REFERRED TO PROVISIONS OF THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT THAT THE SEVEN MEMBERS OF LOCAL UNION 721 WHO WERE SENT TO THE PROJECT BY THAT LOCAL UPON THE REQUEST OF THE RESPONDENT ARE COVERED BY THE AGREEMENT WHILE WORKING ON THE PROJECT OF THE RESPONDENT LOCATED IN BOARD GEOGRAPHIC AREA NO. 29. THE REMAINING TWO IRONWORKERS ON THE PROJECT ARE NOT COVERED BY THE AGREEMENT. THESE TWO IRONWORKERS, HOWEVER, ARE NOT MEMBERS OF THE APPLICANT. IN OTHER WORDS, THE APPLICANT HAS NO MEMBERSHIP AMONG THE EMPLOYEES IN THE BARGAINING UNIT FOR WHICH IT IS SEEKING CERTIFICATION.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON DECEMBER 24TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. THIS APPLICATION ACCORDINGLY IS DISMISSED.

15481-68-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) v. RIVERSIDE POULTRY CO. LTD. (RESPONDENT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (INTERVENER).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS A. MAIN AND F. W. MURRAY.

APPEARANCES AT THE HEARING: C. BORSK FOR THE APPLICANT; NO ONE APPEARING FOR THE RESPONDENT; AND T. A. HOGAN FOR THE INTERVENER.

DECISION OF THE BOARD: JANUARY 29, 1969.

• • •

2. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE APPLICANT IS SEEKING TO BECOME THE CERTIFIED BARGAINING AGENT FOR "ALL EMPLOYEES OF THE RESPONDENT IN ITS FURTHER PROCESSING DIVISION AT LONDON, ONTARIO, SAVE AND EXCEPT FOREMEN, AND PERSONS ABOVE THE RANK OF FOREMAN". FOLLOWING THE HEARING IN THIS MATTER AT WHICH IT IS TO BE NOTED THE RESPONDENT DID NOT APPEAR, THE BOARD SENT THE FOLLOWING LETTER TO THE PARTIES AND, IN ADDITION, TO THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO:

I HAVE BEEN DIRECTED BY THE BOARD TO BRING THE FOLLOWING MATTERS TO YOUR ATTENTION:

1. HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES AT THE HEARING IN THIS MATTER ON JANUARY 8TH, THE BOARD REVIEWED THE COLLECTIVE AGREEMENT PREVIOUSLY IN EXISTENCE BETWEEN THE RESPONDENT AND AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, C.L.C., IN FORCE FROM JULY 4, 1965 UNTIL JULY 3, 1968.
2. ARTICLE 11 OF THE SAID AGREEMENT PROVIDES THAT THE COMPANY RECOGNIZES THE UNION AS THE SOLE COLLECTIVE BARGAINING AGENT OF ALL EMPLOYEES OF THE COMPANY AT LONDON SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, STATIONARY ENGINEERS AND OFFICE STAFF.
3. IT WOULD APPEAR THAT THE PARTIES TO THE AGREEMENT ARE PRESENTLY IN CONCILIATION WITH RESPECT TO ITS RENEWAL.

4. IT WOULD THEREFORE APPEAR THAT THE EMPLOYEES AFFECTED BY THE PRESENT APPLICATION WERE COVERED BY THE SAID AGREEMENT AND THAT THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, C.L.C. HAVE BARGAINING RIGHTS FOR THE SAID EMPLOYEES. IT WOULD FURTHER APPEAR THAT THE PRESENT APPLICATION IS UNTIMELY, HAVING REGARD TO THE PROVISIONS OF SECTION 46 OF THE LABOUR RELATIONS ACT.

5. IF YOU HAVE ANY COMMENTS OR REPRESENTATIONS TO MAKE IN CONNECTION WITH THE ABOVE ITEMS, THEY SHOULD BE IN THE HANDS OF THE BOARD ON OR BEFORE WEDNESDAY, JANUARY 15, 1969.

3. TO DATE NONE OF THE PERSONS TO WHOM THE LETTER WAS ADDRESSED HAS MADE ANY WRITTEN COMMENTS OR REPRESENTATIONS TO THE BOARD. IN THESE CIRCUMSTANCES AND ON THE BASIS OF ALL THE EVIDENCE BEFORE US, THE BOARD FINDS THAT, HAVING REGARD TO THE PROVISIONS OF SECTION 46 OF THE LABOUR RELATIONS ACT, THIS APPLICATION IS UNTIMELY AND IT IS ACCORDINGLY HEREBY DISMISSED.

15556-68-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1687 (APPLICANT) v. EVOY-MCLEAN LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

DECISION OF THE BOARD: JANUARY 27, 1969.

1. IN SUPPORT OF ITS APPLICATION THE APPLICANT FILED FIVE RECEIPTS INDICATING PAYMENT OF \$1.00 "ON INITIATION FEES". THE RECEIPTS ARE COUNTERSIGNED AND INDICATE THAT AUTHORIZATION IS GIVEN TO THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS TO REPRESENT THE PAYORS IN COLLECTIVE BARGAINING WITH THEIR EMPLOYER.

2. IN MATTHEWS CONSTRUCTION LIMITED, 55 C.L.L.C. PAR. 18,017, THE BOARD WAS FACED WITH THE QUESTION AS TO THE WEIGHT TO BE GIVEN TO RECEIPTS FILED WITHOUT AN ACCOMPANYING APPLICATION CARD. THE MAJORITY OF THE BOARD HELD:

APART FROM ACKNOWLEDGING THE PAYMENT OF \$2.00 IN EACH CASE, THE ONLY INDICATION ON THE FACE OF THE RECEIPT THAT IT MAY HAVE SOME RELATIONSHIP TO MEMBERSHIP IN THE APPLICANT UNION ARE THE WORDS "ON ACCOUNT PAYMENT OF INITIATION FEE". THERE IS NOTHING TO SHOW THAT THE PERSON WHOSE NAME APPEARS

ON THE RECEIPT APPLIED FOR MEMBERSHIP IN THE APPLICANT OR AGREED TO ACCEPT THE OBLIGATIONS OF MEMBERSHIP OR WAS DULY ENROLLED AS A MEMBER. IN OUR OPINION, THOSE DOCUMENTS DO NOT CONSTITUTE SATISFACTORY PROOF OF MEMBERSHIP. THE APPLICATION IS ACCORDINGLY DISMISSED.

SEE ALSO EASTERN ONTARIO TILE AND TERRAZZO COMPANY LIMITED, O.L.R.B. MONTHLY REPORT, MARCH 1963, PAGE 516.

3. THE INSTANT CASE WOULD APPEAR TO FALL SQUARELY WITHIN BOTH OF THESE CASES. THE ONLY DIFFERENCE IS IN THE AUTHORIZATION GIVEN TO THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, WHICH, INCIDENTALLY, IS NOT THE APPLICANT IN THE INSTANT CASE, TO REPRESENT EMPLOYEES IN COLLECTIVE BARGAINING. HOWEVER, THE BOARD HAS LONG HELD THAT AN AUTHORIZATION CARD IS NOT EQUIVALENT TO AN APPLICATION FOR MEMBERSHIP. SEE TAPLIN CONSTRUCTION LIMITED, O.L.R.B. MONTHLY REPORT, NOVEMBER 1965, PAGE 542 AT PAGE 546.

4. HAVING REGARD TO THE ABOVE CONSIDERATIONS, THIS APPLICATION IS DISMISSED.

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED
OF DURING JANUARY

15414-68-R: BLH-BERTRAM LIMITED (APPLICANT) v. THE INTERNATIONAL MOLDERS' & ALLIED WORKERS' UNION (RESPONDENT).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS R.W. TEAGLE AND E. BOYER.

APPEARANCES AT THE HEARING: JOHN P. SANDERSON, C. HOOPER, KEN FOLEY FOR THE APPLICANT AND NO ONE APPEARING FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 17, 1969.

1. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING BARGAINING RIGHTS. THE APPLICANT ALLEGES THAT THE PARTICULAR OPERATION IS NO LONGER OPERATIVE AND NO EMPLOYEES ARE PRESENTLY ENGAGED IN SUCH OPERATION.

2. ON OCTOBER 24TH, 1967 A SIMILAR APPLICATION BY THE APPLICANT WAS DISMISSED BY THIS BOARD. THE RELEVANT PARTS OF THE BOARD'S DECISION OF OCTOBER 1967 ARE AS FOLLOWS:

"THE APPLICANT HAS APPLIED, PURSUANT TO THE PROVISIONS OF SECTION 45 OF THE LABOUR RELATIONS

ACT, FOR A DECLARATION TERMINATING BARGAINING
RIGHTS OF THE RESPONDENT.

IT APPEARS THAT THE APPLICANT CLOSED ITS FOUNDRY OPERATIONS, IN WHICH THE EMPLOYEES REPRESENTED BY THE RESPONDENT WERE EMPLOYED, ON FEBRUARY 17TH, 1967. THE APPLICANT ALSO STATED THAT IT HAS NO INTENTION OF REOPENING ITS FOUNDRY AND THAT AT THE PRESENT TIME NO EMPLOYEES IN THE BARGAINING UNIT REPRESENTED BY THE RESPONDENT ARE EMPLOYED BY THE APPLICANT.

IT SEEMS TO THE BOARD THAT, IN GENERAL, THE LANGUAGE USED BY THE BOARD IN THE SOLE CASE (1949) D.L.S. 7-2105, IS APPLICABLE UNDER THE PRESENT LEGISLATION AND TO THE PRESENT SITUATION. THE LANGUAGE OF THAT CASE ADAPTED TO THE PRESENT LEGISLATION IS AS FOLLOWS:

'A [TERMINATION] PROCEEDING IS A TYPE OF REPRESENTATION PROCEEDING, THAT IS, IT HAS AS ITS OBJECTIVE THE DETERMINATION OF A QUESTION OF REPRESENTATION. AN APPLICATION FOR [A DECLARATION TERMINATING BARGAINING RIGHTS] IS, IN EFFECT, A REQUEST THAT THE BOARD EXAMINE INTO AND DETERMINE THE QUESTION WHETHER THE EMPLOYEES AFFECTIONED BY THE APPLICATION DESIRE TO CONTINUE TO BE REPRESENTED BY THEIR ... BARGAINING AGENT. THE BASIS UPON WHICH [A DECLARATION TERMINATING BARGAINING RIGHTS] MAY BE GRANTED IS THAT 'A BARGAINING AGENT NO LONGER REPRESENTS ... THE EMPLOYEE IN [THE BARGAINING UNIT]'. THAT CRITERION, WE SUGGEST, PRESUMES THE EXISTENCE OF THE UNIT, OR TO STATE IT IN ANOTHER WAY, PRESUMES THE PRESENCE IN THE UNIT OF EMPLOYEES WHO MAY SIGNIFY WHETHER OR NOT THEY WISH THE BARGAINING AGENT CONCERNED TO CONTINUE TO REPRESENT THEM. IN THE PRESENT INSTANCE THAT CONDITION DOES NOT OBTAIN.'

HAVING REGARD TO THE CIRCUMSTANCES AND THE PRINCIPLES OUTLINED ABOVE, THIS APPLICATION IS THEREFORE DISMISSED.

IT IS TO BE NOTED THAT AT THE HEARING IN THIS MATTER, THE RESPONDENT ADVISED THE BOARD THAT IT DID NOT INTEND TO SEEK TO BARGAIN WITH THE APPLICANT FOR A NEW COLLECTIVE AGREEMENT UNTIL SUCH TIME AS THE APPLICANT EMPLOYED PERSONS FOR WHOM THE RESPONDENT WAS THE BARGAINING AGENT."

3. IN SUPPORT OF ITS APPLICATION, THE APPLICANT CITED BURNS & Co. LIMITED AND LOCAL UNION NO. 415, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA A F OF L-CIO CASE, 61 CLLC 953; C.L.S. 76-793, WHICH WAS NOT REFERRED TO IN THE BOARD'S DECISION OF OCTOBER 1967 AND SUGGESTED THAT HAD THIS CASE BEEN BROUGHT TO THE BOARD'S ATTENTION IN THE EARLIER APPLICATION THAT THE BOARD MIGHT HAVE COME TO A DIFFERENT CONCLUSION.

4. IN THE BURNS CASE THE APPLICANT COMPANY SOUGHT TO TERMINATE THE BARGAINING RIGHTS OF THE UNION ON THE BASIS THAT THE APPLICANT COMPANY'S OPERATIONS HAD BEEN DISCONTINUED AND THERE WERE NO EMPLOYEES IN THE BARGAINING UNIT. THE BOARD FOR THE PURPOSES OF THAT APPLICATION ASSUMED IT HAD JURISDICTION AND ADOPTED THE REASONING IN THE SOLE CASE IN DISMISSING THE APPLICATION. BECAUSE THE FACT SITUATION IN THE BURNS CASE IS SO SIMILAR TO THE INSTANT CASE, WE FEEL THAT THE DECISION IN THE BURNS CASE STRENGTHENS THE BOARD'S EARLIER DECISION OF OCTOBER 1967. HAVING REGARD TO BOTH THE DECISION OF OCTOBER 1967 AND TO THE BURNS CASE, WE FEEL THAT THIS APPLICATION SHOULD BE DISMISSED.

5. THE ISSUE RAISED BY THE APPLICANT WITH RESPECT TO THE BURNS CASE WAS WITH REFERENCES TO THE LAST PARAGRAPH OF THAT CASE WHICH PROVIDED AS FOLLOWS:

"IT SHOULD BE POINTED OUT THAT WE ARE NOT DEALING WITH A CASE OF FRAUD UNDER SECTION 44 OR A CASE UNDER SECTION 45, WHERE A UNION HAS FAILED TO GIVE NOTICE TO BARGAIN OR HAVING GIVEN NOTICE, HAS FAILED TO BARGAIN FOR THE PERIODS OF TIME SET OUT IN THAT SECTION. A DECLARATION TERMINATING BARGAINING RIGHTS IN SUCH CIRCUMSTANCES IS NOT NECESSARILY DEPENDENT UPON THEIR BEING EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE APPLICATION IS MADE."

WE FEEL THAT THE DECISION OF OCTOBER 24TH, 1967 IS NOT IN CONFLICT WITH THE ABOVE QUOTED PARAGRAPH AND WE ADOPT THE REASONING OF THE BOARD IN ITS DECISION OF OCTOBER, 1967 WHERE THEY STATED:

"IN GENERAL, THE LANGUAGE USED BY THE BOARD
IN THE SOLE CASE... IS APPLICABLE UNDER THE
PRESENT LEGISLATION AND TO THE PRESENT SITU-
ATION."

THERE MAY BE SPECIFIC SITUATIONS AS SUGGESTED IN THE BURNS CASE
WHERE THAT LANGUAGE AND REASONING MIGHT NOT BE ADOPTED. HOWEVER,
WE ARE NOT PREPARED TO SPECULATE AS TO WHAT THOSE SITUATIONS
MIGHT BE.

6. THE APPLICATION IS ACCORDINGLY DISMISSED.

15415-68-R: BLH-BERTRAM LIMITED (APPLICANT) v. THE PATTERN MAKERS'
ASSOCIATION OF HAMILTON AND VICINITY (RESPONDENT).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS R. W. TEAGLE
AND E. BOYER.

APPEARANCES AT THE HEARING: JOHN P. SANDERSON, C. HOOPER,
KEN FOLEY FOR THE APPLICANT AND JAMES LESLIE FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 17, 1969.

1. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING
BARGAINING RIGHTS. THE APPLICANT ALLEGES THAT THE PARTICULAR
OPERATION IS NO LONGER OPERATIVE AND NO EMPLOYEES ARE PRESENTLY
ENGAGED IN SUCH OPERATION.

2. ON OCTOBER 24TH, 1967 A SIMILAR APPLICATION BY THE
APPLICANT WAS DISMISSED BY THIS BOARD. THE RELEVANT PARTS OF
THE BOARD'S DECISION OF OCTOBER 1967 ARE AS FOLLOWS:

"THE APPLICANT HAS APPLIED, PURSUANT TO THE
PROVISIONS OF SECTION 45 OF THE LABOUR RELATIONS
ACT, FOR A DECLARATION TERMINATING BARGAINING
RIGHTS OF THE RESPONDENT.

IT APPEARS THAT THE APPLICANT CLOSED ITS
FOUNDRY OPERATIONS, IN WHICH THE EMPLOYEES
REPRESENTED BY THE RESPONDENT WERE EMPLOYED,
ON FEBRUARY 17TH, 1967. THE APPLICANT ALSO
STATED THAT IT HAS NO INTENTION OF REOPENING
ITS FOUNDRY AND THAT AT THE PRESENT TIME NO
EMPLOYEES IN THE BARGAINING UNIT REPRESENTED
BY THE RESPONDENT ARE EMPLOYED BY THE APPLICANT.

IT SEEMS TO THE BOARD THAT, IN GENERAL, THE LANGUAGE USED BY THE BOARD IN THE SOLE CASE (1949) D.L.S. 7-2105, IS APPLICABLE UNDER THE PRESENT LEGISLATION AND TO THE PRESENT SITUATION. THE LANGUAGE OF THAT CASE ADAPTED TO THE PRESENT LEGISLATION IS AS FOLLOWS:

'A [TERMINATION] PROCEEDING IS A TYPE OF REPRESENTATION PROCEEDING, THAT IS, IT HAS AS ITS OBJECTIVE THE DETERMINATION OF A QUESTION OF REPRESENTATION. AN APPLICATION FOR [A DECLARATION TERMINATING BARGAINING RIGHTS] IS, IN EFFECT, A REQUEST THAT THE BOARD EXAMINE INTO AND DETERMINE THE QUESTION WHETHER THE EMPLOYEES AFFECTED BY THE APPLICATION DESIRE TO CONTINUE TO BE REPRESENTED BY THEIR ... BARGAINING AGENT. THE BASIS UPON WHICH [A DECLARATION TERMINATING BARGAINING RIGHTS] MAY BE GRANTED IS THAT 'A BARGAINING AGENT NO LONGER REPRESENTS ...THE EMPLOYEE IN [THE BARGAINING UNIT]'. THAT CRITERION, WE SUGGEST, PRESUMES THE EXISTENCE OF THE UNIT, OR TO STATE IT IN ANOTHER WAY, PRESUMES THE PRESENCE IN THE UNIT OF EMPLOYEES WHO MAY SIGNIFY WHETHER OR NOT THEY WISH THE BARGAINING AGENT CONCERNED TO CONTINUE TO REPRESENT THEM. IN THE PRESENT INSTANCE THAT CONDITION DOES NOT OBTAIN.'

HAVING REGARD TO THE CIRCUMSTANCES AND THE PRINCIPLES OUTLINED ABOVE, THIS APPLICATION IS THEREFORE DISMISSED.

IT IS TO BE NOTED THAT AT THE HEARING IN THIS MATTER, THE RESPONDENT ADVISED THE BOARD THAT IT DID NOT INTEND TO SEEK TO BARGAIN WITH THE APPLICANT FOR A NEW COLLECTIVE AGREEMENT UNTIL SUCH TIME AS THE APPLICANT EMPLOYED PERSONS FOR WHOM THE RESPONDENT WAS THE BARGAINING AGENT."

3. IN SUPPORT OF ITS APPLICATION, THE APPLICANT CITED BURNS & Co. LIMITED AND LOCAL UNION No. 415, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA A F OF L-CIO CASE, 61 CLLC 953; C.L.S. 76-793, WHICH WAS NOT REFERRED TO IN THE BOARD'S DECISION OF OCTOBER 1967 AND SUGGESTED THAT HAD THIS CASE BEEN BROUGHT TO THE BOARD'S ATTENTION IN THE EARLIER APPLICATION THAT THE BOARD MIGHT HAVE COME TO A DIFFERENT CONCLUSION.

4. IN THE BURNS CASE THE APPLICANT COMPANY SOUGHT TO TERMINATE THE BARGAINING RIGHTS OF THE UNION ON THE BASIS THAT THE APPLICANT COMPANY'S OPERATIONS HAD BEEN DISCONTINUED AND THERE WERE NO EMPLOYEES IN THE BARGAINING UNIT. THE BOARD FOR THE PURPOSES OF THAT APPLICATION ASSUMED IT HAD JURISDICTION AND ADOPTED THE REASONING IN THE SOLE CASE IN DISMISSING THE APPLICATION. BECAUSE THE FACT SITUATION IN THE BURNS CASE IS SO SIMILAR TO THE INSTANT CASE, WE FEEL THAT THE DECISION IN THE BURNS CASE STRENGTHENS THE BOARD'S EARLIER DECISION OF OCTOBER 1967. HAVING REGARD TO BOTH THE DECISION OF OCTOBER 1967 AND TO THE BURNS CASE, WE FEEL THAT THIS APPLICATION SHOULD BE DISMISSED.

5. THE ISSUE RAISED BY THE APPLICANT WITH RESPECT TO THE BURNS CASE WAS WITH REFERENCES TO THE LAST PARAGRAPH OF THAT CASE WHICH PROVIDED AS FOLLOWS:

"IT SHOULD BE POINTED OUT THAT WE ARE NOT DEALING WITH A CASE OF FRAUD UNDER SECTION 44 OR A CASE UNDER SECTION 45, WHERE A UNION HAS FAILED TO GIVE NOTICE TO BARGAIN OR HAVING GIVEN NOTICE, HAS FAILED TO BARGAIN FOR THE PERIODS OF TIME SET OUT IN THAT SECTION. A DECLARATION TERMINATING BARGAINING RIGHTS IN SUCH CIRCUMSTANCES IS NOT NECESSARILY DEPENDENT UPON THEIR BEING EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE APPLICATION IS MADE."

WE FEEL THAT THE DECISION OF OCTOBER 24TH, 1967 IS NOT IN CONFLICT WITH THE ABOVE QUOTED PARAGRAPH AND WE ADOPT THE REASONING OF THE BOARD IN ITS DECISION OF OCTOBER, 1967 WHERE THEY STATED:

"IN GENERAL, THE LANGUAGE USED BY THE BOARD IN THE SOLE CASE...IS APPLICABLE UNDER THE PRESENT LEGISLATION AND TO THE PRESENT SITUATION."

THERE MAY BE SPECIFIC SITUATIONS AS SUGGESTED IN THE BURNS CASE WHERE THAT LANGUAGE AND REASONING MIGHT NOT BE ADOPTED. HOWEVER, WE ARE NOT PREPARED TO SPECULATE AS TO WHAT THOSE SITUATIONS MIGHT BE.

6. THE APPLICATION IS ACCORDINGLY DISMISSED.

15510-68-R: PHILIP GORDON & ASSOCIATES (APPLICANT) v. RETAIL CLERKS INTERNATIONAL ASSOCIATION (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: W. M. TEMPLE AND M. CIPRIANI FOR THE APPLICANT, IAN SCOTT AND THOMAS L. REES FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 23, 1969.

1. THE APPLICANT HAS APPLIED ON DECEMBER 31ST, 1968 FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT PURSUANT TO THE PROVISIONS OF SECTION 45 OF THE LABOUR RELATIONS ACT. THE EVIDENCE ESTABLISHED THAT THE RESPONDENT WAS CERTIFIED FOR CERTAIN EMPLOYEES OF THE APPLICANT ON THE 9TH DAY OF OCTOBER, 1968.

2. THE RESPONDENT FAILED TO GIVE THE EMPLOYER NOTICE TO BARGAIN UNDER SECTION 11 OF THE ACT WITHIN SIXTY DAYS FOLLOWING CERTIFICATION AS REQUIRED BY SECTION 45(1) OF THE ACT. WHILE THE RESPONDENT TOOK THE POSITION THAT IT ASSUMED THAT ITS DEALINGS WITH ANOTHER EMPLOYER WOULD BE EVIDENCE OR NOTICE OF ITS DESIRE TO BARGAIN WITH THE APPLICANT IN THIS CASE, THE RESPONDENT FRANKLY ADMITTED THAT IT HAD FAILED TO GIVE NOTICE OF ITS DESIRE TO BARGAIN UNDER SECTION 11 WITHIN THE TIME PROVIDED BY SECTION 45(1) OF THE ACT.

3. WHILE NOTICE OF THIS APPLICATION WAS POSTED ON THE APPLICANT'S PREMISES, NONE OF THE APPLICANT'S EMPLOYEES OPPOSED THE APPLICATION IN THIS MATTER. IT IS ALSO TO BE NOTED THAT WHILE THE RESPONDENT WAS CERTIFIED ON OCTOBER 9TH, 1968, ITS APPLICATION FOR CERTIFICATION IN WHICH ITS DOCUMENTARY EVIDENCE OF MEMBERSHIP WAS FILED HAD BEEN MADE APPROXIMATELY ONE YEAR PRIOR TO THE DATE OF CERTIFICATION. THE CERTIFICATION HEARING WAS PROLONGED BY SEVERAL HEARINGS BEFORE THE EXAMINER AND SEVERAL HEARINGS BEFORE THE LABOUR RELATIONS BOARD WITH RESPECT TO MATTERS RAISED BY THE PARTIES IN THAT APPLICATION. IN ALL THESE CIRCUMSTANCES, THE BOARD IS OF OPINION THAT A REPRESENTATION VOTE SHOULD BE TAKEN TO DETERMINE THE CURRENT WISHES OF THE EMPLOYEES OF THE APPLICANT WITH RESPECT TO THEIR DESIRE TO HAVE THE RESPONDENT CONTINUE TO REPRESENT THEM.

4. THE BOARD ACCORDINGLY DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF ALL EMPLOYEES OF THE APPLICANT IN THE FURNITURE DEPARTMENT OF G.E.M. STORES (1965) AT OTTAWA, SAVE AND EXCEPT FURNITURE DEPARTMENT MANAGER AND PERSONS ABOVE THE RANK OF FURNITURE DEPARTMENT MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN.

5. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE RESPONDENT.

6. THE MATTER IS REFERRED TO THE REGISTRAR.

15511-68-R: Sentry Department Stores Limited (Operating under the name G.E.M. Stores (1965) (Applicant) v. Retail Clerks International Association (Respondent).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: W. M. TEMPLE AND A. W. JAMIESON FOR THE APPLICANT, IAN SCOTT AND THOMAS L. REES FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER
R. W. TEAGLE: JANUARY 23, 1969.

1. THE APPLICANT HAS APPLIED ON DECEMBER 31ST, 1968 FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT PURSUANT TO THE PROVISIONS OF SECTION 45 OF THE LABOUR RELATIONS ACT. THE EVIDENCE ESTABLISHED THAT THE RESPONDENT WAS CERTIFIED FOR A UNIT OF FRONT OFFICE EMPLOYEES OF THE APPLICANT ON THE 28TH DAY OF OCTOBER, 1968. HOWEVER, THE APPLICANT ACKNOWLEDGED THAT THERE ARE NO EMPLOYEES IN THAT BARGAINING UNIT EMPLOYED BY THE APPLICANT AT THE PRESENT TIME.

2. HAVING REGARD FOR THE REASONS FOR DECISION IN THE BLH-BERTRAM LIMITED CASE, BOARD FILE 15414-68-R, DATED JANUARY 17TH, 1969, THE BOARD DISMISSES THIS APPLICATION INSOFAR AS IT APPLIES TO THE FRONT OFFICE EMPLOYEES OF THE APPLICANT AT ITS G.E.M. STORES AT OTTAWA.

3. THE EVIDENCE FURTHER ESTABLISHED THAT THE RESPONDENT WAS CERTIFIED FOR ALL EMPLOYEES OF THE APPLICANT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AT ITS STORE AT OTTAWA, WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT, ON THE 5TH DAY OF SEPTEMBER, 1968, FOLLOWING CERTIFICATION, THE RESPONDENT SERVED NOTICE TO BARGAIN ON THE APPLICANT ON SEPTEMBER 30TH, 1968. ON OCTOBER 8TH, 1968, THE APPLICANT CONFIRMED THE AGREEMENT OF THE PARTIES TO MEET ON OCTOBER 15TH AND OCTOBER 16TH, 1968 TO BEGIN NEGOTIATIONS FOR A CONTRACT WITH RESPECT TO THE "PART-TIME" EMPLOYEES. PRIOR TO OCTOBER 15TH, THE RESPONDENT FOUND THAT IT WAS UNABLE TO KEEP THE APPOINTMENT REFERRED TO IN THE APPLICANT'S LETTER AND THE PARTIES AGREED TO MEET ON OCTOBER 21ST

AND OCTOBER 22ND INSTEAD OF THE DATES FIRST ARRANGED. AT THE MEETINGS SCHEDULED FOR OCTOBER 21ST AND 22ND, THE PARTIES ALSO INTENDED TO PREPARE VOTERS' LISTS FOR THE FULL-TIME EMPLOYEES IN WHICH UNIT THE BOARD HAD DIRECTED A REPRESENTATION VOTE.

4. ON OCTOBER 21ST, MR. REES WHO WAS TO CONDUCT THE RESPONDENT'S NEGOTIATIONS TELEPHONED AND ADVISED THE APPLICANT THAT HE WOULD BE UNABLE TO ATTEND ON OCTOBER 21ST, BUT WOULD BE IN ATTENDANCE FOR THE MEETING ON OCTOBER 22ND. ON OCTOBER 22ND, ANOTHER UNION OFFICIAL ATTENDED AT THE RESPONDENT'S PREMISES PURSUANT TO THE APPOINTMENT ARRANGED WITH MR. REES AND SETTLED THE VOTERS' LIST FOR THE FULL-TIME EMPLOYEES. MR. REES DID NOT ARRIVE AT THE MEETING ON OCTOBER 22ND UNTIL SOME TIME BETWEEN 3:30 AND 4:00 O'CLOCK IN THE AFTERNOON. MR. REES AGAIN WENT OVER THE VOTERS' LIST AND HAD COMPLETED HIS EFFORTS IN THIS REGARD SOME TIME BETWEEN 4:00 AND 4:30 P.M. UPON THE COMPLETION OF HIS INVESTIGATION OF THE VOTERS' LIST, MR. REES SUGGESTED TO THE APPLICANT THAT, "YOU DON'T WANT TO NEGOTIATE A COLLECTIVE AGREEMENT BEFORE CHRISTMAS, DO YOU," TO WHICH ONE OF THE APPLICANT'S OFFICIALS REPLIED, "NOT IF I CAN HELP IT." NOTHING FURTHER WAS SAID AND NO ARRANGEMENTS WERE MADE FOR A SUBSEQUENT MEETING. NO BARGAINING TOOK PLACE AT THE MEETING ON OCTOBER 22ND AND THE RESPONDENT FAILED TO LEAVE ANY PROPOSALS FOR A COLLECTIVE AGREEMENT WITH THE APPLICANT AT THAT TIME. THERE WAS NO COMMUNICATION BETWEEN OCTOBER 22ND AND THE DATE THIS APPLICATION WAS MADE BETWEEN THE RESPONDENT AND THE APPLICANT. IT WAS ONLY ON JANUARY 8TH, 1969, FOLLOWING THE RECEIPT OF NOTICE OF THIS APPLICATION BY THE RESPONDENT, THAT THE RESPONDENT SAW FIT TO REQUEST A MEETING TO BARGAIN FOR A COLLECTIVE AGREEMENT.

5. IT IS READILY APPARENT FROM THE FACTS SET OUT ABOVE THAT FOLLOWING NOTICE TO BARGAIN ON SEPTEMBER 30TH, 1968, MORE THAN SIXTY DAYS HAVE ELAPSED DURING WHICH TIME THE RESPONDENT UNION HAS FAILED TO SEEK TO BARGAIN. INDEED, MORE THAN SIXTY DAYS ELAPSED FOLLOWING THE MEETING ON OCTOBER 22ND, DURING WHICH THE VOTERS' LIST WAS SETTLED AND THE DATE THIS APPLICATION WAS MADE, DURING WHICH TIME THE RESPONDENT UNION DID NOT SEEK TO BARGAIN. IT IS TO BE NOTED FURTHER THAT WHILE THE RESPONDENT UNION WAS CERTIFIED ON SEPTEMBER 5TH, 1968, ITS APPLICATION FOR CERTIFICATION IN WHICH ITS MEMBERSHIP EVIDENCE WAS FILED WAS MADE APPROXIMATELY ONE YEAR PRIOR TO THE DATE OF CERTIFICATION. THE LONG DELAY BETWEEN THE DATE OF APPLICATION FOR CERTIFICATION AND THE DATE THE BOARD CERTIFIED THE RESPONDENT WAS OCCASIONED BY MANY MEETINGS BEFORE AN EXAMINER AND BEFORE THE BOARD TO DEAL WITH ISSUES RAISED BY THE PARTIES IN THIS CASE. IN VIEW OF THE FACT THAT THE RESPONDENT UNION HAS PERMITTED MORE THAN SIXTY DAYS TO ELAPSE PRIOR TO THE MAKING OF THIS APPLICATION DURING WHICH TIME IT HAS NOT SOUGHT TO BARGAIN, THE BOARD FINDS THAT A REAL QUESTION ARISES AS TO THE WISHES OF THE EMPLOYEES IN THE BARGAINING UNIT TO

CONTINUE TO BE REPRESENTED BY THE RESPONDENT UNION. THE BOARD ACCORDINGLY, PURSUANT TO THE PROVISIONS OF SECTION 45(2) OF THE ACT, IS OF OPINION THAT A REPRESENTATION VOTE SHOULD BE TAKEN TO DETERMINE THE CURRENT WISHES OF THE EMPLOYEES IN THIS REGARD.

6. IT IS ALSO TO BE NOTED THAT ALTHOUGH NOTICE OF THIS APPLICATION WAS POSTED ON THE APPLICANT'S PREMISES, NONE OF THE APPLICANT'S EMPLOYEES IN THE BARGAINING UNIT INTERVENED TO OPPOSE THIS APPLICATION.

7. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN AMONG ALL EMPLOYEES OF THE APPLICANT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AT ITS STORE AT OTTAWA, SAVE AND EXCEPT STORE MANAGER, ASSISTANT STORE MANAGER, MERCHANDISING DEPARTMENT MANAGERS, DEPARTMENT MANAGERS, FRONT OFFICE SUPERVISOR, AND PERSONS ABOVE THOSE RANKS, OFFICE STAFF, SECURITY GUARDS AND PERSONS COVERED BY BARGAINING UNIT #1, REFERRED TO IN THE BOARD'S DECISION DATED SEPTEMBER 5TH, 1968 IN BOARD FILE 13756-67-R WHEREIN THE RESPONDENT IN THIS MATTER WAS CERTIFIED AS BARGAINING AGENT FOR THE ABOVE UNIT OF EMPLOYEES OF THE APPLICANT, ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN.

8. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE RESPONDENT.

9. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER E. BOYER:

JANUARY 23, 1969.

I DISSENT. HAVING REGARD TO ALL THE EVIDENCE I WOULD FIND THAT THERE HAS BEEN NO UNDUE DELAY ON THE PART OF THE RESPONDENT AND I WOULD DISMISS THE APPLICATION.

INDEXED ENDORSEMENT - SUCCESSOR STATUS

15280-68-R: LAKE ONTARIO DISTRICT COUNCIL OF CARPENTERS (APPLICANT)
v. ALL CONTRACTORS WHO HAVE AGREEMENTS WITH LOCAL 397 WHITBY, LOCAL
1450 PETERBOROUGH AND LOCAL 1071 COBOURG OF THE UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA. AS FOLLOWS: BATHE & MCLELLAN
CONST. LTD., H. M. BROOKS LTD., CHEMONG CONSTRUCTION LTD., DALE
PLASTERING LTD., DROGE CONSTRUCTION LTD., GAY CO. LTD., GOULDING BROS.
LTD., KONVEY CONSTRUCTION LTD., LYNVIEW CONSTRUCTION LTD., MEL-RON
CONSTRUCTION., MILBURN LATH, PLASTER & ACOUSTICS LTD., VANHOOF CONST.
(WHITBY) LTD., WILLIAM D. WINTER LTD., UNION-CITY CONST. LTD., SANDON

CONST. LTD., PIGOTT CONSTRUCTION CO. LTD., PLORINS & PEDE,
JACKSON-LEWIS COMPANY LTD., JOHN WHEELWRIGHT, E.G.M. CAPE &
COMPANY LTD., ELCO CONSTRUCTION (1967) LTD., DINEEN CONSTRUCTION
LTD., H.J. GASCOIGNE LTD., ELLIS-DON LTD., OVERALL DESIGN,
PERWIN CONSTRUCTION CO. LTD., SKOPIT CONTRACTORS (TORONTO) LTD.,
POLARIS STEEL LTD., ROXSON CONTRACTORS LTD., MITCHELL CONSTRUCTION
CO. (CANADA), CAMERON - MCINDOO LTD., BEGG & DAIGLE LTD.,
STRUCTURAL FORMWORK, ADAM CLARK COMPANY LTD., CHARLES HUFFMAN LTD.,
MOLLENHAUER CONTRACTING COMPANY, HUGH MURRAY LTD., BALL BROS. LTD.,
FRANKEL FORMWORK CO., ARDEVAN CONSTRUCTION LTD., HARBRIDGE & CROSS,
E. S. MARTIN CONSTRUCTION LTD., DICKIE CONSTRUCTION COMPANY LTD.,
FRANKI CANADA LTD., EASTWOOD CONSTRUCTION CO. LTD., SAPPHIRE
DEVELOPMENTS LTD., INDUSTRIAL CONCRETE FORMING, H. A. RUSSELL &
SEDORE LTD., OLYMPIA & YORK, W. A. STEPHENSON CONSTRUCTION COMPANY
LTD., CODECO LTD., THE FOUNDATION COMPANY OF CANADA LTD., EASTERN
CONSTRUCTION COMPANY LTD., FINLEY W. MCLACHLAN LTD., THOMAS J. FULLER
CONSTRUCTION CO. (1958) LTD., M. SULLIVAN & SON LTD. GENERAL
CONTRACTORS, MORTLOCK CONSTRUCTION (1963) LTD., CONCRETE COLUMN
CLAMPS (1961) LTD., CARTER CONSTRUCTION CO. LTD., VARAMAEC CONSTRUCTION
LTD., IMPERIAL MILLWORK INSTALLATIONS, LESLIE GEORGE CONSTRUCTION LTD.,
LYNVIEW CONSTRUCTION CO. LTD., RIDEAU VALLEY CONSTRUCTORS LTD., P. R.
CONNOLLY CONSTRUCTION LTD., PAUL CARRUTHERS CONST. LTD., DEMMER
CONSTRUCTION LTD., MILNE & NICHOLS LTD. GEN. CONTRACTORS., MOIRE RIVER
CONST. LTD., RULIFF GRASS CONSTRUCTION, R. REUSSE CONST. CO. LTD.,
SMID CONSTRUCTION, TOPE CONST. CO. LTD., VANBOTS CONST. CO., KAMRUS
CONST. LTD., HURLEY-GREGORIS LTD. (RESPONDENTS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: ALBERT LALONDE, DON URQUHART, MERVIN AVERY AND LIONEL KELLY FOR THE APPLICANT; B. W. BINNING AND G. A. BECIGNEUL FOR THE RESPONDENTS MEMBERS OF THE TORONTO CONSTRUCTION ASSOCIATION AND OF ONTARIO GENERAL CONTRACTORS ASSOCIATION; WARREN K. WINKEY, D. FLYNN AND P. ANGUS FOR THE RESPONDENT, THE FOUNDATION COMPANY OF CANADA LTD.; E. R. FENTON AND F. L. BROOKS FOR THE RESPONDENTS H. M. BROOKS LTD. AND CHARLES HUFFMAN LTD. ET AL; FRANK BEHAM FOR THE RESPONDENT, EASTWOOD CONSTRUCTION CO. LTD.

DECISION OF THE BOARD: JANUARY 2, 1969.

1. THIS IS AN APPLICATION BROUGHT UNDER SECTION 47 OF THE ACT FOR A DECLARATION THAT THE LAKE ONTARIO DISTRICT COUNCIL OF CARPENTERS HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF ITS PREDECESSOR LOCALS 397, 1071 AND 1450 UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA.

2. THE LAKE ONTARIO DISTRICT COUNCIL OF CARPENTERS, HEREIN-AFTER CALLED THE "COUNCIL", AGREED WITH COUNSEL FOR THE FOUNDATION COMPANY OF CANADA LIMITED THAT THAT COMPANY WAS NOT PROPERLY A PARTY TO THESE PROCEEDINGS. ACCORDINGLY, THE APPLICATION IS DISMISSED IN-SOFAR AS IT RELATES TO THE FOUNDATION COMPANY OF CANADA LIMITED.

3. THE RESPONDENTS TOOK THE POSITION THAT THE COUNCIL WAS NOT A TRADE UNION WITHIN THE MEANING OF THE ACT, AND SO HAD NO STATUS TO BRING AN APPLICATION UNDER SECTION 47 OF THE ACT AND THAT CONSEQUENTLY THE BOARD HAD NO JURISDICTION TO ENTERTAIN THE APPLICATION. SECTION 47(1) READS AS FOLLOWS:

"WHERE A TRADE UNION CLAIMS THAT BY REASON OF A MERGER OR AMALGAMATION OR A TRANSFER OF JURISDICTION IT IS THE SUCCESSOR OF A TRADE UNION THAT AT THE TIME OF THE MERGER, AMALGAMATION OR TRANSFER OF JURISDICTION WAS THE BARGAINING AGENT OF A UNIT OF EMPLOYEES OF AN EMPLOYER AND ANY QUESTION ARISES IN RESPECT OF ITS RIGHT TO ACT AS THE SUCCESSOR, THE BOARD, IN ANY PROCEEDING BEFORE IT OR ON THE APPLICATION OF ANY PERSON OR TRADE UNION CONCERNED, MAY DECLARE THAT THE SUCCESSOR HAS OR HAS NOT, AS THE CASE MAY BE, ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES UNDER THIS ACT OF ITS PREDECESSOR, OR THE BOARD MAY DISMISS THE APPLICATION."

4. THE MATTER COMES BEFORE THE BOARD BY WAY OF APPLICATION AND NOT AS A QUESTION ARISING IN SOME PROCEEDING BEFORE THE BOARD. THE SECTION PROVIDES THAT AN APPLICATION MAY BE BROUGHT BY ANY PERSON OR TRADE UNION CONCERNED. (THIS, OF COURSE, COULD INCLUDE A TRADE UNION WHICH WAS CLAIMING THE SUCCESSOR RIGHTS). IT IS CLEAR THAT THE COUNCIL IS NOT A PERSON AS THAT WORD IS USED IN THE LABOUR RELATIONS ACT. (SEE, FOR EXAMPLE, SECTION 51 WHICH EMBODIES THE DISTINCTION BETWEEN A PERSON, A TRADE UNION AND A COUNCIL OF TRADE UNIONS. SEE ALSO SECTION 59A (2)). IN CONSIDERING WHETHER THE COUNCIL IS A TRADE UNION, REGARD MUST BE HAD FOR THE DEFINITION SET OUT IN SECTION 1(1)(J) OF THE ACT WHICH READS AS FOLLOWS:

"'TRADE UNION' MEANS AN ORGANIZATION OF EMPLOYEES FORMED FOR PURPOSES THAT INCLUDE THE REGULATION OF RELATIONS BETWEEN EMPLOYEES AND EMPLOYERS AND INCLUDES A PROVINCIAL, NATIONAL OR INTERNATIONAL TRADE UNION AND A CERTIFIED COUNCIL OF TRADE UNIONS, R.S.O. 1960, c.202 s.1(1); 1961-62, c.68, s1,(1); 1964, c.53, s.1; 1966, c.76, s.1."

5. ASSUMING, BUT WITHOUT SO FINDING, THAT THE COUNCIL IS A PROPERLY CONSTITUTED COUNCIL OF TRADE UNIONS, IT MUST STILL ESTABLISH, IF IT IS TO SUCCEED HEREIN, THAT IT COMES WITHIN THE FOREGOING DEFINITION OF A TRADE UNION.

6. THE ACT DISTINGUISHES BETWEEN A COUNCIL OF TRADE UNIONS AND A CERTIFIED COUNCIL OF TRADE UNIONS. SECTION 1(1) (E) STATES "COUNCIL OF TRADE UNIONS" INCLUDES AN ALLIED COUNCIL, A TRADES COUNCIL, A JOINT BOARD AND ANY OTHER ASSOCIATION OF TRADE UNION;" A CERTIFIED COUNCIL OF TRADE UNIONS, ACCORDING TO SECTION 1(1)(BA) "MEANS A COUNCIL OF TRADE UNIONS THAT IS CERTIFIED UNDER THIS ACT AS THE BARGAINING AGENT FOR A BARGAINING UNIT OF EMPLOYEES OF AN EMPLOYER;" THE DISTINCTION IS MADE OBVIOUS IN SECTION 8A(1) WHICH SETS OUT THE PROCEDURES WHEREBY A COUNCIL OF TRADE UNIONS MAY BECOME A CERTIFIED COUNCIL OF TRADE UNIONS. (SEE ALSO SECTION 38(3) AND (4)).

7. ON THE BASIS OF THE FOREGOING, IT MUST BE CONCLUDED THAT THE OMISSION OF A "COUNCIL OF TRADE UNIONS" FROM AND THE INCLUSION OF A "CERTIFIED COUNCIL OF TRADE UNIONS" IN THE DEFINITION OF A TRADE UNION IS INTENTIONAL. IT FOLLOWS THEN THAT UNLESS THE COUNCIL IS FOUND TO BE A CERTIFIED COUNCIL OF TRADE UNIONS, IT CANNOT QUALIFY AS A TRADE UNION WITHIN THE MEANING OF THE ACT.

8. INSOFAR AS THE LATTER POINT IS CONCERNED, IT WAS COMMON GROUND THAT THE COUNCIL IS NOT, IN THE WORDS OF THE DEFINITION, A COUNCIL OF TRADE UNIONS THAT IS CERTIFIED UNDER THE ACT AS THE BARGAINING AGENT FOR A BARGAINING UNIT OF EMPLOYEES OF AN EMPLOYER. THE COUNCIL THEREFORE, IS NOT A TRADE UNION WITHIN THE MEANING OF THE LABOUR RELATIONS ACT. SINCE THE COUNCIL IS NEITHER A PERSON NOR A TRADE UNION, IT HAS NO STATUS AS AN APPLICANT UNDER THE PROVISIONS OF SECTION 47 OF THE ACT. FURTHERMORE, THE SECTION IS OPERATIVE ONLY WHERE THE CLAIMANT TO SUCCESSOR RIGHTS IS A TRADE UNION. APART, THEREFORE, FROM THE QUESTION OF ITS LACK OF STATUS AS AN APPLICANT FOR A DECLARATION UNDER SECTION 47, THE COUNCIL DOES NOT QUALIFY AS A PROPER CLAIMANT TO SUCCESSOR RIGHTS.

9. FOR ALL OF THE FOREGOING REASONS, THE APPLICATION IS HEREBY DISMISSED.

INDEXED ENDORSEMENTS - STRIKE UNLAWFUL

15482-68-U: THE FOUNDATION COMPANY OF CANADA LIMITED, AND A. D. ROSS & COMPANY LIMITED (APPLICANTS) v.

P. BOXMA	C.O. GUINDON	T.G. LOVE
S.E. BEAUCHAMP	G. HALL	A. NEVAN
L. BEDARD	R. HOULE	A. PARADIS
E. BARBEAU	R. JOHNSTON	G. PLAYFORD
P.L. ADAM	A. KERR	A. RAYMOND
L.J. BEAUSOLEIL	C. LAFERRIERE	G. ROBERTSON
R. BLEAU	P. LAJEUNESSE	G. ROSSI
N.A. BOULARD	J. LALONDE	W. ROQUE
C. BOIVIN	R. LALONDE	A. SAVARD

R. A. BRIGGS
C.L. CHEWICK
R.J. DORION
E. FLEIHMAN
J.L. VOISY
W.F. GOODWARD
G. GEMUS

R. LAMAVRE
J. LANGE
A. LAPIERRE
G. LEACH
J. MUNROE
N. MURPHY
J.P. LAFERRIERE

A. SAVARD
J. WALLACE
L. STRADIOTTO
R. WALLACE
R. SERERES
J. LEPAGE
(RESPONDENTS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: L. J. VALIN, Q.C., B. WAKELIN AND P. ANGUS FOR THE APPLICANTS; NO ONE APPEARING FOR THE RESPONDENTS.

DECISION OF THE BOARD: JANUARY 3, 1969.

1. THIS IS AN APPLICATION FOR A DECLARATION THAT A STRIKE ENGAGED IN BY THE RESPONDENTS WAS UNLAWFUL.
2. SINCE THE RESPONDENTS G. HALL, N. MURPHY AND W. ROQUE WERE NOT PROPERLY SERVED WITH NOTICE OF THESE PROCEEDINGS, THIS APPLICATION WITH RESPECT TO G. HALL, N. MURPHY AND W. ROQUE IS WITHDRAWN AT THE REQUEST OF THE APPLICANTS BY LEAVE OF THE BOARD.
3. THE EVIDENCE ESTABLISHED THAT THE RESPONDENTS ARE EMPLOYED IN THE JOINT VENTURE CARRIED ON BY THE APPLICANTS AT THE IRON ORE RECOVERY PROJECT AT COPPER CLIFF AND WERE AT ALL RELEVANT TIMES COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE UNITED ASSOCIATION OF JOURNEYMAN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 800, WHICH IS EFFECTIVE UNTIL THE 30TH DAY OF APRIL, 1969.
4. THE EVIDENCE FURTHER ESTABLISHED THAT THE RESPONDENTS IN COMBINATION OR IN CONCERT AND IN ACCORDANCE WITH A COMMON UNDERSTANDING REFUSED TO CONTINUE TO WORK ON MONDAY, DECEMBER 16, 1968 AND AGAIN REFUSED TO WORK ON DECEMBER 17, DECEMBER 18 AND DECEMBER 19, 1968 AND HAVE THEREBY ENGAGED IN A STRIKE WITHIN THE MEANING OF SECTION 1(1)(I) OF THE LABOUR RELATIONS ACT AGAINST THE APPLICANTS AT COPPER CLIFF.
5. THE BOARD THEREFORE FINDS THAT THE STRIKE ENGAGED IN BY THE SAID RESPONDENTS OCCURRED DURING THE TERM OF OPERATION OF THE COLLECTIVE AGREEMENT BINDING UPON THEM AND THERE IS NOTHING IN THE EVIDENCE WHICH WOULD CAUSE THE BOARD TO EXERCISE ITS DISCRETION IN FAVOUR OF THE RESPONDENTS.
6. THE BOARD ACCORDINGLY DECLARES THAT THE STRIKE ENGAGED IN BY THE SAID RESPONDENTS IS AN UNLAWFUL STRIKE CONTRARY TO THE PROVISIONS OF SECTION 54(1) OF THE LABOUR RELATIONS ACT.

15483-68-U: THE FOUNDATION COMPANY OF CANADA LIMITED AND A. D. ROSS & COMPANY LIMITED (APPLICANTS) V. THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 800 (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: L. J. VALIN, Q.C., B. WAKELIN AND P. ANGUS FOR THE APPLICANTS; NO ONE APPEARING FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 3, 1969.

1. THIS IS AN APPLICATION FOR A DECLARATION THAT A STRIKE CALLED OR AUTHORIZED BY THE RESPONDENT UNION IS UNLAWFUL.

2. THE EVIDENCE ESTABLISHED THAT THE RESPONDENT UNION IS A PARTY TO A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANTS AND THE RESPONDENT WHICH IS EFFECTIVE UNTIL THE 30TH DAY OF APRIL, 1969.

3. THE EVIDENCE FURTHER ESTABLISHED THAT THE EMPLOYEES COVERED BY THE SAID COLLECTIVE AGREEMENT, WITH THE SUPPORT AND ENCOURAGEMENT OF PETER BOXMA, AN OFFICIAL OR AGENT OF THE RESPONDENT UNION, REFUSED TO WORK IN COMBINATION OR IN CONCERT AND IN ACCORDANCE WITH A COMMON UNDERSTANDING ON DECEMBER 16, 17, 18 AND 19, 1968 THEREBY ENGAGING IN A STRIKE WITHIN THE MEANING OF SECTION 1(1)(i) OF THE LABOUR RELATIONS ACT AGAINST THE APPLICANTS AT COPPER CLIFF.

4. THE BOARD THEREFORE FINDS THAT THE RESPONDENT UNION CALLED OR AUTHORIZED THE STRIKE ENGAGED IN BY THE EMPLOYEES COVERED BY THE SAID COLLECTIVE AGREEMENT DURING THE TERM OF OPERATION OF THE COLLECTIVE AGREEMENT AND THE BOARD ACCORDINGLY DECLARES THAT THE STRIKE ENGAGED IN BY THE EMPLOYEES COVERED BY THE SAID COLLECTIVE AGREEMENT BINDING UPON THE RESPONDENT UNION IS AN UNLAWFUL STRIKE AND WAS CALLED OR AUTHORIZED BY THE RESPONDENT UNION CONTRARY TO THE PROVISIONS OF SECTION 55 OF THE LABOUR RELATIONS ACT.

INDEXED ENDORSEMENTS - PROSECUTION

15000-68-U: FRASER-BRACE ENGINEERING COMPANY LIMITED (APPLICANT) v.

ANTON LIMA	NILO NURMI	NILLO E. FLOYD
ONNI TOIVONEN	WILDOR VEILLETTE	ALAN RINTA
JEAN LAFRANCE	FERNAND PITRE	GEORGE RUDOLPHE WALA
MAURICE SAGUIN	JOHN CASTILLOUX	ERMOND CHARBONNEAU
AXEL RINALDO WESTERLUND	ARTHUR I. MORIN	ANDREW PADNER
MIKE OJA	PAUL LATENSEE	BASILE JOSEPH IEBLOND
DAVID GASCON	HENRI LOSIER	ALPHONSE LABONTE
ALBERT THIBEAULT	WAINO LAINE	LEO HENRI

ODILAS J. PREVOST
FRANK X. ROBICHAUD
RAYMOND AUBIN
WALFRED RONKA
TED VILLENEUVE
ALCIDE EAMPEAU
NICK DEMBISKI
JEAN LACOMBE
KAARLO HARJU
WAINO HIETANEN
AIMO ANTERO SILVAN
TOIVO KORPI
(RESPONDENTS).

AAPO HIETALA
NILLO NIEMI
TAUNO YRGO FILPUS
VAINO VIITALA
ONNI ANSELM KESKINEN
PAUL L. THERIAULT
LEONARD MOORE
UNTO VAINIONPAA
ANTTI UITTO
DESIRE ST. AMAND
TAUNO VANTTINEN
SANDERI SALMINEN
RALPH BERGERON
KENNETH ANDRES
WILFRED LAPointe
JOSEPH PETTIPSS
VILHO THANAINEN
LEO ADELMAIRE RICHER
FERN GOULET
ED LAVOIE
MARC ROY
LUC BUMONT
AATOS KENNINEN
DAVID LOUIE RYAN

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: A. J. CLARK, D. H. STEVENS FOR THE
APPLICANT AND P. E. GUERTIN FOR THE RESPONDENTS.

DECISION OF THE BOARD: JANUARY 29, 1969.

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION PURSUANT TO SECTION 74 OF THE LABOUR RELATIONS ACT ON THE BASIS THAT THE RESPONDENTS, CONTRARY TO SECTION 54 OF THE LABOUR RELATIONS ACT, DID STRIKE WHERE A COLLECTIVE AGREEMENT WAS IN OPERATION.

2. AT THE CONCLUSION OF THE EVIDENCE, COUNSEL FOR THE APPLICANT ADVISED THE BOARD THAT HE WAS WITHDRAWING THE APPLICATION INSOFAR AS IT RELATED TO K. ANDRES. WE HAVE HEARD THE EVIDENCE CONCERNING MR. ANDRES AND ACCORDINGLY THE APPLICATION IS DISMISSED AS AGAINST K. ANDRES.

3. THE FOLLOWING PERSONS WERE NOT DULY SERVED WITH NOTICE OF THE APPLICATION AND HEARING: JOSEPH PETTIPSS, LEO ADELMAIRE RICHER, WILDOR VEILLETTE, ONNI TOIVONEN. THE APPLICANT HAS ADVISED THE BOARD THAT IT DOES NOT SEEK CONSENT TO PROSECUTE WITH RESPECT TO THESE PERSONS AND ACCORDINGLY THE APPLICATION SO FAR AS IT RELATES TO THESE EMPLOYEES IS WITHDRAWN BY LEAVE OF THE BOARD.

4. AT THE HEARING, COUNSEL FOR THE RESPONDENTS MOVED THAT THE APPLICATION BE DISMISSED ON THE BASIS THAT THE APPLICANT DID NOT PROCEED EXPEDITIOUSLY WITH THE HEARING. THE APPLICATION WAS BROUGHT ON AUGUST 22ND, 1968 AND LISTED FOR HEARING ON OCTOBER 1ST, 1968. ON OR ABOUT SEPTEMBER 6TH, 1968, COUNSEL FOR THE APPLICANT AND COUNSEL FOR THE RESPONDENTS AGREED THAT THIS MATTER WAS TO BE ADJOURNED SINE DIE AND ACCORDINGLY THE APPLICATION WAS NOT PROCEEDED WITH ON OCTOBER 1ST, 1968. ON DECEMBER 12TH, 1968 THE APPLICANT ADVISED THE BOARD THAT IT WAS TO PROCEED WITH THE APPLICATION AND THE BOARD THEN LISTED THIS MATTER FOR HEARING ON JANUARY 21ST, 1969.

5. THE LABOUR RELATIONS ACT, SECTION 74 PROVIDES THAT FOR A CONTRAVENTION OF THE ACT THAT AN "INFORMATION MAY BE LAID". SEE ALSO SECTION 70. ACCORDINGLY, WHEN THE PARTIES OBTAIN LEAVE THEY MAY PROCEED BY LAYING AN INFORMATION IN ACCORDANCE WITH THE CRIMINAL CODE PART XXIV WHICH CONTAINS THE PROCEDURE FOR SUMMARY CONVICTIONS. SECTION 693(2) OF PART XXIV OF THE CRIMINAL CODE PROVIDES THAT:

"NO PROCEEDINGS SHALL BE INSTITUTED MORE THAN SIX MONTHS AFTER THE TIME WHEN THE SUBJECT MATTER OF THE PROCEEDINGS AROSE."

THAT LIMITATION PERIOD GOVERNING PROCEEDINGS UNDER PART XXIV OF THE CRIMINAL CODE IS A RELEVANT CONSIDERATION FOR THIS BOARD IN DEALING WITH CONSENTS TO PROSECUTE PURSUANT TO SECTION 74 OF THE LABOUR RELATIONS ACT. THIS APPLICATION WAS COMMENCED AND THE HEARING CONDUCTED WITHIN THE SIX MONTH LIMITATION PERIOD PROVIDED IN THE CRIMINAL CODE, AND FURTHER THE RESPONDENTS HAVE NOT DEMONSTRATED ANY PREJUDICE TO THEM BY REASON OF THE ALLEGED DELAY. IN ADDITION, THE RESPONDENTS, HAVING CONSENTED TO THE ADJOURNMENT OF THESE PROCEEDINGS, IN THE ABSENCE OF VERY SPECIAL CIRCUMSTANCES, IT DOES NOT LIE WITH THEM TO NOW OBJECT TO ANY DELAY OCCASIONED BY THE ADJOURNMENT. ACCORDINGLY, THE MOTION BY THE RESPONDENTS IS DISMISSED.

6. HAVING REGARD TO ALL THE EVIDENCE ADDUCED THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION THAT THE HEREINAFTER NAMED PERSONS DID STRIKE CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT, R.S.O. 1960, c. 202 s. 54:

ANTON LINNA	NILO NURMI	NILLO E. FLOYD
JEAN LAFRANCE	FERNAND PITRE	ALAN RINTA
MAURICE SEQUIN	JOHN CASTILLOUX	GEORGE RUDOLPHE WALA
AXEL RINALDO WESTERLUND	ARTHUR I. MORIN	ERMOND CHARBONNEAU
MIKE OJA	PAUL LATENSEE	ANDREW PADNER
DAVID GASCON	HENRI LOSIER	BASILE JOSEPH LABLOND
ALBERT THIBEAULT	WAINO LAINE	ALPHONSE LABONTE
ODILAS J. PREVOST	AAPO HIETALA	LEO HENRI
FRANK X. ROBICHAUD	NILLO NJEMI	RALPH BERGERON
RAYMOND AUBIN	TAUNO YRGO FILPUS	WILFRED LAPOLINTE
WALFRED RONKA	VAINO VIITALA	VILHO IAHANAINEN
TED VILLENEUVE	ONNI ANSELM KESKINEN	FERN GOULET
ALCIDE EAMPEAU	PAUL L. THERIAULT	ED LAVOIE
NICK DEMBISKI	LEONARD MOORE	MARC ROY
JEAN LACOMBE	UNTO VAINIONPAA	LUC DUMONT
KAARLO HARJU	ANTTI UITTO	AATOS KANNINEH
WAINO HIETANEN	DESIRE ST. AMAND	DAVID LOUIE RYAN
AIMO ANTERO SILVAN	TAUNO VANTTINEN	TOIVO KORPI
SANDERI SALMINEN		

7. THE APPROPRIATE DOCUMENTS WILL ISSUE.

15370-68-U: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) v.
SCARBOROUGH CENTENARY HOSPITAL (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER
AND F. W. MURRAY.

APPEARANCES AT THE HEARING: J. J. BLAIS AND P. MURPHY FOR THE
APPLICANT, B. H. STEWART AND B. W. VARTY FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER
F. W. MURRAY: JANUARY 27, 1969.

1. THE APPLICANT HAS APPLIED FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST THE RESPONDENT UNDER THE PROVISIONS OF SECTION 59 OF THE LABOUR RELATIONS ACT AND SECTION 10 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT, STATUTES OF ONTARIO, 1965, c. 48.

2. THE APPLICANT ALLEGED THAT FOLLOWING THE SERVICE OF NOTICE TO BARGAIN PURSUANT TO THE PROVISIONS OF SECTION 11 OF THE ACT, THE RESPONDENT GRANTED CERTAIN EMPLOYEES IN THE BARGAINING UNIT AN INCREASE IN WAGES AND ALSO ALTERED THE CONDITIONS OF EMPLOYMENT OF DENNIS BURROWS, A MEMBER OF THE BARGAINING UNIT, WITHOUT CONSENT OF THE UNION CONTRARY TO THE PROVISIONS OF SECTION 59(1) OF THE ACT AND SECTION 10 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT.

3. THE EVIDENCE ESTABLISHED THAT THE RESPONDENT COMMENCED OPERATIONS DURING THE SUMMER OF 1967 AND BEGAN HIRING EMPLOYEES AT THAT TIME. WHEN EMPLOYEES WERE HIRED THEY WERE PUT THROUGH AN ORIENTATION PROGRAM DURING WHICH THEY WERE ADVISED OF THE RESPONDENT'S EMPLOYMENT POLICIES, RULES AND WAGE RATES. THE EMPLOYEES WERE ADVISED THAT THE HOSPITAL HAD ESTABLISHED A MINIMUM AND MAXIMUM SALARY FOR EACH CLASSIFICATION AND THAT THE EMPLOYEES WOULD RECEIVE FIXED ANNUAL INCREMENTS UNTIL THEY REACHED THE TOP OF THE SALARY RANGE FOR THEIR CLASSIFICATION. THE RESPONDENT GAVE CREDIT FOR PRIOR EXPERIENCE TO CERTAIN EMPLOYEES AT THE TIME THEY WERE HIRED AND SUCH EMPLOYEES STARTING RATE WAS THEREFORE FIXED AT THE SECOND OR THIRD STAGE OF THE SALARY RANGE ESTABLISHED FOR THEIR RESPECTIVE CLASSIFICATION.

4. DURING THE SUMMER OF 1968, WHEN CERTAIN EMPLOYEES REACHED THE FIRST ANNIVERSARY OF THEIR SERVICE WITH THE RESPONDENT, THE RESPONDENT GRANTED THE ANNUAL INCREASE WHICH HAD BEEN PROMISED DURING THE ORIENTATION PROGRAM AT THE TIME THEY WERE HIRED.

5. THE APPLICANT SERVED NOTICE TO BARGAIN PURSUANT TO THE PROVISIONS OF SECTION 11 OF THE ACT ON OCTOBER 10TH, 1968.

6. ON OCTOBER 15TH, 1968, THE APPLICANT WROTE A LETTER TO THE RESPONDENT WHICH READS, IN PART, AS FOLLOWS:

WE WOULD FURTHER LIKE TO BRING TO YOUR ATTENTION SECTION 59 (1) OF THE ONTARIO LABOUR RELATIONS ACT. WE QUOTE: "NO EMPLOYER SHALL, EXCEPT WITH THE CONSENT OF THE TRADE UNION ALTER THE RATES OF WAGES OR ANY OTHER TERM OR CONDITION OF EMPLOYMENT OR ANY RIGHT." END OF QUOTE.

SHOULD YOU WISH TO INCREASE THE WAGES OR IMPROVE THE WORKING CONDITIONS OF YOUR EMPLOYEES, THE BARGAINING COMMITTEE WILL BE ONLY TO PLEASED TO TAKE THIS INTO CONSIDERATION PROVIDED THE PROPOSED WAGE INCREASE AND WORKING CONDITION ARE GIVEN TO US IN WRITING.

7. AT A BARGAINING MEETING HELD ON OCTOBER 25TH, 1968, THE RESPONDENT ADVISED THE UNION THAT IT PROPOSED TO CONTINUE ITS PRACTICE OF GRANTING ANNUAL INCREASES ON THE ANNIVERSARY OF EMPLOYMENT OF ITS EMPLOYEES. THE UNION TOOK THE POSITION THAT IT WOULD NOT OPPOSE THE GRANTING OF INCREASES TO THE EMPLOYEES, PROVIDED THAT THE UNION WAS SATISFIED THAT THE INCREASES WERE GRANTED IN A NON-DISCRIMINATORY MANNER.

8. ON OCTOBER 31ST, THE RESPONDENT WROTE THE FOLLOWING LETTER TO THE UNION:

ON FRIDAY, OCTOBER 25, 1968, AT A MEETING IN THE HOSPITAL CALLED FOR THE PURPOSE OF NEGOTIATING A CONTRACT ON BEHALF OF OUR GENERAL EMPLOYEES, I INFORMED YOU OF OUR INTENTION TO CONTINUE OUR PRACTICE OF INCREASING THE EMPLOYEES' RATES OF PAY UPON SUCCESSFUL COMPLETION OF ONE YEAR OF SERVICE AND BY AMOUNTS FIXED A YEAR AGO AS BEING STEPS FOR ADVANCEMENT WITHIN SALARY RANGES FOR THEIR JOBS.

PURSUANT TO YOUR REQUEST, WE ARE PLEASED TO ADVISE THAT ALL EMPLOYEES WHO HAVE COMPLETED ONE CONTINUOUS YEAR OF SERVICE WITH THE HOSPITAL HAVE BEEN GRANTED SUCH INCREASES.

9. FOLLOWING THE RECEIPT OF THE LETTER OF OCTOBER 31ST, THE PRESIDENT OF THE APPLICANT TELEPHONED THE RESPONDENT AND REQUESTED FURTHER DETAILS OF THE INCREASES WHICH HAD BEEN GRANTED.

10. ON NOVEMBER 1ST, THE RESPONDENT WROTE A LETTER TO THE APPLICANT WHICH READS, IN PART, AS FOLLOWS:

PURSUANT TO OUR TELEPHONE CONVERSATION OF THIS MORNING I WISH TO INFORM YOU THAT THE FOLLOWING PERSONNEL HAVE BEEN GRANTED AN ANNIVERSARY INCREASE IN THE AMOUNTS INDICATED. THE EFFECTIVE DATES VARY BECAUSE OF THE POSTPONEMENT WHICH TOOK PLACE UPON RECEIPT OF YOUR NOTICE OF DESIRE TO BARGAIN AND THE LAPSE OF TIME FROM THEN UNTIL OUR MEETING OF LAST WEEK:-

<u>DEPARTMENT</u>	<u>EMPLOYEE</u>	<u>FORMER RATE</u>	<u>NEW RATE</u>	<u>EFFECTIVE</u>
-------------------	-----------------	--------------------	-----------------	------------------

(THERE FOLLOWS A LIST OF EMPLOYEES WITH THE PERTINENT INFORMATION UNDER EACH HEADING).

11. THE INSTANT APPLICATION WAS MADE ON NOVEMBER 25TH, 1968.

12. ON NOVEMBER 26TH, 1968, THE RESPONDENT GRANTED FURTHER INCREASES TO EMPLOYEES WHOSE ANNIVERSARY OF EMPLOYMENT OCCURRED DURING THE MONTH OF NOVEMBER AND AGAIN ADVISED THE APPLICANT OF THE DETAILS OF SUCH INCREASES IN THE SAME MANNER AS IT HAD DONE IN ITS LETTER OF NOVEMBER 1ST.

13. THE EVIDENCE PERTAINING TO DENNIS BURROWS IS THAT HE WAS EMPLOYED IN THE RESPONDENT'S SUPPLY DEPARTMENT. AT THE RELEVANT TIMES, MR. BURROWS WAS EMPLOYED AS AN OPERATOR OF AN AUTOCLAVE MACHINE IN THE STERILIZING SECTION.

14. THE RESPONDENT HAD RECEIVED COMPLAINTS FROM ITS LABORATORY DURING THE MONTH OF NOVEMBER THAT POSITIVE CULTURES HAD BEEN OBTAINED FROM MATERIAL THAT SHOULD HAVE BEEN STERILIZED BY ITS AUTOCLAVE MACHINE OPERATED BY MR. BURROWS. IT WAS ALSO DISCOVERED AT THIS TIME THAT MR. BURROWS HAD MANUALLY FILLED IN THE GRAPH ON THE AUTOCLAVE MACHINE WHICH RECORDED THE TEMPERATURE CHANGES ON THE MACHINE. THE MACHINE HAD FAILED TO RECORD THE CHANGES IN TEMPERATURE ON THE GRAPH AND MR. BURROWS HAD ALTERED THE GRAPH TO RECORD THE TEMPERATURE WHICH HE BELIEVED THE MACHINE HAD REACHED. BECAUSE OF THE SERIOUSNESS OF THE PROBLEM, IT WAS DECIDED, AMONG OTHER THINGS TO CHANGE THE AUTOCLAVE OPERATOR. MR. BURROWS WAS TRANSFERRED FROM THE STERILIZING SECTION TO THE STORES SECTION OF THE SUPPLY DEPARTMENT. WHILE THE NATURE OF MR. BURROWS' DUTIES CHANGED, HIS RATE OF PAY AND OTHER CONDITIONS OF EMPLOYMENT REMAINED THE SAME. THE UNION WAS NOT CONSULTED WHEN MR. BURROWS WAS TRANSFERRED.

15. SECTION 59(1) OF THE ACT AND SECTION 10 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT READ AS FOLLOWS:

59.-(1) WHERE NOTICE HAS BEEN GIVEN UNDER SECTION 11 OR SECTION 40 AND NO COLLECTIVE AGREEMENT IS IN OPERATION, NO EMPLOYER SHALL, EXCEPT WITH THE CONSENT OF THE TRADE UNION, ALTER THE RATES OF WAGES OR ANY OTHER TERM OR CONDITION OF EMPLOYMENT OR ANY RIGHT, PRIVILEGE OR DUTY, OF THE EMPLOYER, THE TRADE UNION OR THE EMPLOYEES, AND NO TRADE UNION SHALL, EXCEPT WITH THE CONSENT OF THE EMPLOYER, ALTER ANY TERM OR CONDITION OF EMPLOYMENT OR ANY RIGHT, PRIVILEGE OR DUTY OF THE EMPLOYER, THE TRADE UNION OR THE EMPLOYEES.

(a) UNTIL THE MINISTER HAS APPOINTED A CONCILIATION OFFICER OR A MEDIATOR UNDER THIS ACT AND,

(i) SEVEN DAYS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES THE REPORT OF A CONCILIATION BOARD OR MEDIATOR, OR

(ii) FOURTEEN DAYS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES A NOTICE THAT HE DOES NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD.

AS THE CASE MAY BE; OR

(b) UNTIL THE RIGHT OF THE TRADE UNION TO REPRESENT THE EMPLOYEES HAS BEEN TERMINATED,

WHICHEVER OCCURS FIRST.

10. NOTWITHSTANDING SUBSECTION 1 OF SECTION 59 OF THE LABOUR RELATIONS ACT, WHERE NOTICE HAS BEEN GIVEN UNDER SECTION 11 OR 40 OF THAT ACT BY OR TO A TRADE UNION THAT IS THE BARGAINING AGENT FOR A BARGAINING UNIT OF HOSPITAL EMPLOYEES TO WHICH THIS ACT APPLIES TO OR BY THE EMPLOYER OF SUCH EMPLOYEES AND NO COLLECTIVE AGREEMENT IS IN OPERATION, NO SUCH EMPLOYER SHALL, EXCEPT WITH THE CONSENT OF THE TRADE UNION, ALTER THE RATES OF WAGES OR ANY OTHER TERM OR CONDITION OF EMPLOYMENT OR ANY RIGHT, PRIVILEGE OR DUTY OF THE EMPLOYER, THE TRADE UNION OR THE EMPLOYEES, AND NO SUCH TRADE UNION SHALL, EXCEPT WITH THE CONSENT OF THE EMPLOYER, ALTER ANY TERM OR CONDITION OF EMPLOYMENT OR ANY RIGHT, PRIVILEGE

OR DUTY OF THE EMPLOYER, THE TRADE UNION OR THE EMPLOYEES, UNTIL THE RIGHT OF THE TRADE UNION TO REPRESENT THE EMPLOYEES HAS BEEN TERMINATED.

16. THE APPLICANT ARGUED THAT SINCE THE CHANGES OF RATES OF PAY OF THE EMPLOYEES ON THEIR ANNIVERSARY DATES AND THE CHANGE IN MR. BURROWS' WORK WAS EFFECTED WITHOUT THE UNION'S CONSENT, THE RESPONDENT THEREFORE ACTED CONTRARY TO THE PROVISIONS OF SECTION 59(1) OF THE ACT AND SECTION 10 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT.

17. THE APPLICANT IN ITS ARGUMENT ACKNOWLEDGED THAT HAD THE RESPONDENT DECIDED NOT TO IMPLEMENT THE ANNIVERSARY INCREASES IN WAGES WITHOUT FIRST OBTAINING THE UNION'S CONSENT, THE APPLICANT'S POSITION IN THIS MATTER WOULD BE THE SAME. IT WAS THE APPLICANT'S ARGUMENT THAT SECTION 59(1) AND SECTION 10 QUOTED ABOVE ARE INTENDED BY THE LEGISLATURE TO PROMOTE COLLECTIVE BARGAINING BY COMPELLING THE PARTIES TO ENTER INTO COMMUNICATION ONE WITH THE OTHER SO THAT ANY CHANGES THAT NEED TO BE MADE WILL BE MADE AS A RESULT OF JOINT ACTION BETWEEN THE PARTIES. UNILATERAL ALTERATION OF RATES OF WAGES, TERMS OR CONDITIONS OF EMPLOYMENT, ETC., ARE THEREBY PROHIBITED. IF THIS IS ACCOMPLISHED ONE PARTY WILL NOT BE ABLE TO OBTAIN AN UNFAIR ADVANTAGE OVER THE OTHER EITHER FROM THE POINT OF VIEW OF BARGAINING OR OF PROPAGANDA.

18. WE DO NOT QUARREL WITH THE APPLICANT'S INTERPRETATION OF THE PURPOSE AND INTENT OF SECTION 59(1) OF THE ACT OR SECTION 10 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT. HOWEVER THAT MAY BE, IT WOULD APPEAR ON THE FACTS OF THIS CASE THAT WITH RESPECT TO THE IMPLEMENTATION OF ANNUAL INCREASE, THE RESPONDENT WILL BE DAMNED IF IT DOES AND DAMNED IT IT DOESN'T IN THE VIEW OF THE APPLICANT IF IT ACTS WITHOUT THE APPLICANT'S CONSENT.

19. THE REAL QUESTION THEREFORE TO BE DETERMINED BY THE BOARD IS WHETHER THAT WHICH WAS DONE BY THE RESPONDENT IN THIS CASE CONSTITUTED AN ALTERATION OF THE RATES OF WAGES OR CONDITION OF EMPLOYMENT OF THE EMPLOYEE. IF WE FIND IN THE AFFIRMATIVE, THE BOARD WILL THEN HAVE TO DETERMINE, AS A MATTER OF DISCRETION, WHETHER THE BOARD'S CONSENT TO THE PROSECUTION FOR THE ALLEGED OFFENCE SHOULD ISSUE.

20. WE ARE SATISFIED ON THE EVIDENCE THAT THE COMPANY HAD AN ESTABLISHED WAGE SCALE WHICH PROVIDED FOR ANNUAL INCREASES WITHIN A FIXED RANGE. WE ARE FURTHER SATISFIED THAT ALL INCREASES WERE GRANTED WITHIN THE RANGE IN ACCORDANCE WITH THE ANNOUNCED POLICY. THE RESPONDENT HAD ESTABLISHED THE PRACTICE OF GRANTING ANNUAL INCREASES PURSUANT TO ITS ANNOUNCED POLICY PRIOR TO THE UNION GIVING NOTICE TO BARGAIN. IT MUST THEREFORE BE FOUND THAT

THE WAGE RATE FOR THE EMPLOYEES WAS NOT MERELY THE AMOUNT THAT WAS PAID TO THEM ON THE DATE THAT NOTICE TO BARGAIN WAS SERVED BUT INCLUDED THE AMOUNT THAT HAD BEEN PROMISED AND WHICH WOULD BECOME DUE AND PAYABLE AFTER THE ELAPSE OF THE REMAINDER OF THEIR FIRST YEAR OF EMPLOYMENT WITH THE RESPONDENT. OUR OPINION IN THIS REGARD IS IN ACCORD WITH THE DECISION OF THE COURT OF QUEEN'S BENCH FOR THE PROVINCE OF QUEBEC AS REPORTED IN KIDDIES TOGS MFG. CO. LTD. v. R. EX REL. DEUITCH, 65 CLLC 11,214, 14040, WHEREIN THE COURT STATED, "ALL THE COMPANY DID WAS TO CONTINUE A POLICY THAT WAS IN VOGUE AND THERE WAS NO CHANGE IN THE CONDITIONS OF WORK."

21. AGAIN, IN THE CASE OF THE GOVERNOR AND COMPANY OF ADVENTURERS OF ENGLAND TRADING INTO HUDSON'S BAY, OPERATING AS HUDSON'S BAY COMPANY, BOARD FILE 15178-68-U, DECEMBER 6, 1968, THE BOARD WAS FACED WITH A SIMILAR PROBLEM WHERE A COMPANY MADE AND GAVE NOTICE OF ITS DECISION PRIOR TO NOTICE TO BARGAIN AND SUBSEQUENTLY ATTEMPTED TO IMPLEMENT ITS DECISION AFTER NOTICE TO BARGAIN WAS SERVED. THE BOARD IN THAT CASE RELIED UPON THE DECISION OF BROWN, J. IN OFFICE AND TECHNICAL EMPLOYEES UNION, LOCAL 378 AND ESTABROOKS v. CASECO CONSULTANTS LIMITED (UNREPORTED) REFERRED TO IN HOSPITAL EMPLOYEES' UNION v. CRANBROOK AND DISTRICT HOSPITAL SOCIETY, 68 CLLC 11, 721, WHEREIN HE STATED AS FOLLOWS:

THE NOTICE BY THE DEFENDANT WAS GIVEN BEFORE THE PLAINTIFF UNION HAD GIVEN ITS NOTICE TO COMMENCE BARGAINING, AND IT WOULD APPEAR TO ME FROM THE WORDING OF THE ACT THAT THE PROHIBITION IN SECTION 18(B) APPLIES TO THINGS ACTUALLY AND ACTIVELY DONE AFTER NOTICE TO COMMENCE COLLECTIVE (BARGAINING/SIC.) HAS BEEN GIVEN, AND NOT TO THINGS THAT HAPPEN OR ARE MEANT TO HAPPEN AFTER THAT NOTICE IS GIVEN BY REASON OF HAVING BEEN PUT IN MOTION BEFORE THE PERIOD OF PROHIBITION HAS SET IN.

22. FOR THE REASONS GIVEN IN THE CASES REFERRED TO ABOVE, WE FIND THAT THE DECISION TO PAY THE RATES WITHIN THE WAGE SCALE WAS MADE AND ANNOUNCED PRIOR TO NOTICE TO BARGAIN BEING GIVEN BY THE UNION. THE PROMISED INCREASE WAS THEREFORE PART OF THE HIRING AGREEMENT WHICH WAS BINDING UPON THE RESPONDENT EVEN THOUGH IMPLEMENTATION OF THE AGREEMENT WAS POSTPONED UNTIL ONE YEAR HAD ELAPSED. THE IMPLEMENTATION OF THE RATE WHICH HAD BEEN PREVIOUSLY AGREED TO CANNOT BE CHARACTERIZED AS AN ALTERATION OF THE "RATES OF WAGES" OR "CONDITION OF EMPLOYMENT" AS CONTEMPLATED BY SECTION 59(1) OF THE ACT OR SECTION 10 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT. INDEED, IF THE RESPONDENT HAD REFUSED TO IMPLEMENT THE ANNUAL INCREASE WHICH HAD BEEN PREVIOUSLY AGREED TO, SUCH REFUSAL WOULD CONSTITUTE AN ALTERATION OF THE RATE OF WAGES OR CONDITION OF EMPLOYMENT.

23. THE ASSIGNMENT OF NEW DUTIES TO MR. BURROWS CANNOT BE CONSTRUED AS AN ALTERATION OF A CONDITION OF EMPLOYMENT AS CONTEMPLATED BY THE RELEVANT SECTIONS. IN OUR VIEW, AS A MATTER OF DISCRETION IN THE INTEREST OF SOUND LABOUR RELATIONS, AN EMPLOYER MUST RETAIN THE RIGHT TO ASSIGN INDIVIDUAL EMPLOYEES ON A DAY TO DAY BASIS IN ORDER THAT THE EMPLOYER'S BUSINESS MAY BE CONDUCTED IN A Viable WAY. WHILE SUCH TRANSFERS AND ASSIGNMENTS MAY BE SUBJECT TO RESTRICTIONS AS A RESULT OF COLLECTIVE BARGAINING, THE EMPLOYER'S RIGHT TO MAKE SUCH ASSIGNMENTS AND TRANSFERS REMAINS IN TACT SUBJECT ONLY TO THE GRIEVANCE PROCEDURE. EVEN IF A COLLECTIVE AGREEMENT WERE TO LIMIT SUCH ACTIVITY BY AN EMPLOYER AN EMPLOYER WOULD BE FREE TO MAKE THE ASSIGNMENT OR TRANSFER WITHIN THE FRAMEWORK OF THE LIMITATION. IF AN EMPLOYER DEALS WITH AN INDIVIDUAL EMPLOYEE IN AN UNLAWFUL MANNER RELIEF MAY BE AVAILABLE UNDER SECTION 50 OR SOME OTHER SECTION OF THE LABOUR RELATIONS ACT. IT IS OUR VIEW, HOWEVER, THAT SECTION 59(1) OF THE ACT AND SECTION 10 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT DO NOT PROHIBIT AN EMPLOYER FROM MAKING THE USUAL ASSIGNMENT OF WORK IN LIGHT OF PREVAILING CONDITIONS ON A DAY TO DAY BASIS IN THE MANNER THAT WAS DONE BY THE RESPONDENT IN THIS CASE.

24. ACCORDINGLY, IN THE EXERCISE OF OUR DISCRETION AND IN THE LIGHT OF THE CASES ABOVE REFERRED TO, WE FIND THAT THE ACTIVITIES OF THE RESPONDENT OF WHICH THE APPLICANT HAS COMPLAINED DO NOT CONSTITUTE A BREACH OF SECTION 59(1) OF THE ACT OR SECTION 10 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT SO AS TO ENTITLE THE APPLICANT TO THE CONSENT TO PROSECUTE THAT IT SEEKS.

25. THIS APPLICATION IS THEREFORE DISMISSED.

DECISION OF BOARD MEMBER D. B. ARCHER: JANUARY 27, 1969.

THE FACTS AS STATED IN THE MAJORITY DECISION ARE UNDISPUTED. HOWEVER I MUST DISAGREE WITH MY COLLEAGUES BOTH ON THEIR DECISION AND IN THE EXERCISE OF THEIR DISCRETION.

THERE CAN BE NO DOUBT THAT THE RATE OF WAGES OF A LARGE NUMBER OF EMPLOYEES WAS ALTERED AND THE WORKING CONDITIONS OF AT LEAST ONE EMPLOYEE WAS CHANGED CONTRARY TO SECTION 59 OF THE ACT. SINCE THIS THEN IS NOT A FRIVOLOUS OR VEXATIOUS APPLICATION THE EXERCISE OF DISCRETION IS FOR ANOTHER TRIBUNAL. HAVING FOUND THAT THE TERMS OF SECTION 59 WERE VIOLATED I BELIEVE THE BOARD HAS NO ALTERNATIVE THAN TO GRANT THE RELIEF SOUGHT BY THE UNION.

IF A COMPANY CAN CHANGE THE RATE OF WAGES, OR CONDITIONS OF EMPLOYMENT OF INDIVIDUAL EMPLOYEES AND NOT BE IN VIOLATION OF THE ACT AND CAN ALSO ALTER THE RATE OF WAGES OF PRACTICALLY THEIR WHOLE WORK FORCE AND STILL NOT BE IN VIOLATION OF SECTION 59 OF THE ACT, PERHAPS WE SHOULD ASK WHAT USEFUL PURPOSE DOES THE SECTION SERVE AND WHAT WAS THE INTENT OF THE LEGISLATURE WHEN IT WAS INCLUDED IN THE ACT.

I AGREE WITH THE MAJORITY THAT IT WAS THE PURPOSE OF THE LEGISLATURE IN SECTION 59 "TO PROMOTE COLLECTIVE BARGAINING BY COMPELLING THE PARTIES TO ENTER COMMUNICATION ONE WITH THE OTHER SO THAT ANY CHANGES THAT NEED BE MADE WILL BE MADE AS A RESULT OF JOINT ACTION OF THE PARTIES." "UNILATERAL ALTERATIONS OF RATES OF WAGES, TERMS OR CONDITIONS OF EMPLOYMENT ETC. ARE THEREBY PROHIBITED. IF THIS IS ACCOMPLISHED ONE PARTY WILL NOT BE ABLE TO OBTAIN AN UNFAIR ADVANTAGE OVER THE OTHER EITHER FROM THE POINT OF VIEW OF BARGAINING OR PROPAGANDA."

SURELY THE ABOVE CRITERIA IS NOT SATISFIED WHEN THE UNION RECEIVES A LETTER IN REPLY TO ITS REQUEST THAT IT BE CONSULTED ABOUT THE CONTEMPLATED CHANGES WHICH SAYS IN PART, . . . "PURSUANT TO YOUR REQUEST, WE ARE PLEASED TO ADVISE THAT ALL EMPLOYEES WHO HAVE COMPLETED ONE CONTINUOUS YEAR OF SERVICE WITH THE HOSPITAL HAVE BEEN GRANTED SUCH INCREASES". THIS IS NOT A SATISFACTORY ANSWER TO A UNION THAT REMINDS THE EMPLOYER OF SECTION 59 AND CAN BY NO STRETCH OF THE IMAGINATION BE CALLED RECEIVING THE UNION'S CONSENT. AFTER A FURTHER TELEPHONE CONVERSATION AT WHICH TIME THE UNION AGAIN COMPLAINED THEY WERE FINALLY GIVEN THE NAMES OF THE PERSONS WHO RECEIVED THE INCREASE.

WE MUST ASSUME THAT SECTION 59 HAS A USEFUL PURPOSE TO SERVE. WHEN THERE IS A DELIBERATE VIOLATION, AS IN THIS CASE, WHERE THE COMPANY NOT ONLY DID NOT RECEIVE THE UNION'S CONSENT BUT PROCEEDED IN THE FACE OF ITS OPPOSITION I BELIEVE THERE IS A PRIMA FACIE CASE FOR ADJUDICATION AND LEAVE TO PROSECUTE SHOULD HAVE BEEN GRANTED.

15484-68-U: THE FOUNDATION COMPANY OF CANADA LIMITED AND, A.D. ROSS & COMPANY LIMITED (APPLICANTS) v. THE UNITED ASSOCIATION OF JOURNEYMAN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 800 (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS P.J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: LLOYD J. VALIN, Q.C., BEN WAKELIN, PETER ANGUS FOR THE APPLICANTS, AND ROY JAMES, PETER BOXMA FOR THE RESPONDENT.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER
J.E.C. ROBINSON: JANUARY 22, 1969.

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST THE RESPONDENT IN THAT OFFICERS OF THE RESPONDENT NAMELY ROY JAMES AND PETER BOXMA CALLED OR AUTHORIZED MEMBERS OF THE RESPONDENT WHO ARE EMPLOYEES OF THE FOUNDATION COMPANY OF CANADA LIMITED AT ITS INTERNATIONAL NICKEL COMPANY OF CANADA LIMITED IRON ORE RECOVERY PLANT PROJECT ADJACENT TO COPPER CLIFF TO ENGAGE IN AN UNLAWFUL STRIKE CONTRARY TO THE PROVISIONS OF THE SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE PARTIES.

2. HAVING REGARD TO ALL THE EVIDENCE BEFORE THE BOARD AND THE REPRESENTATIONS OF THE PARTIES THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED:

THAT PETER BOXMA BEING AN OFFICER OR AGENT OF THE RESPONDENT DID AT THE APPLICANTS' INTERNATIONAL NICKLE COMPANY OF CANADA LIMITED IRON ORE RECOVERY PLANT PROJECT ADJACENT TO COPPER CLIFF COUNSEL, PROCURE, SUPPORT OR ENCOURAGE AN UNLAWFUL STRIKE CONTRARY TO THE PROVISIONS OF SECTION 55 OF THE LABOUR RELATIONS ACT.

3. THE APPROPRIATE DOCUMENTS WILL ISSUE.

DECISION OF BOARD MEMBER P. J. O'KEEFFE: JANUARY 22, 1969.

ON THE BASIS OF THE EVIDENCE BEFORE US, I FIND NO EVIDENCE TO ESTABLISH THAT THE RESPONDENT CALLED OR AUTHORIZED AN UNLAWFUL STRIKE CONTRARY TO THE PROVISIONS OF THE ACT.

15485-68-U: THE FOUNDATION COMPANY OF CANADA L MITED AND A. D. ROSS & COMPANY LIMITED (APPLICANTS) v.

P. BOXMA	C. O. GUINDON	T. G. LOVE
S. E. BEAUCHAMP	G. HALL	A. NEVEN
L. BEDARD	R. HOULE	A. PARADIS
E. BARBEAU	R. JOHNSTON	G. PLAYFORD
P. L. ADAM	A. KERR	A. RAYMOND
L. J. BEAUSOLEIL	C. LAFERRIERE	G. ROBERTSON

R. BLEAU	J.P. LAFERRIERE	G. ROSSI
N. A. BOULARD	P. LAJEUNESSE	W. ROQUE
C. BOIVIN	J. LALONDE	A. SAVARD
R. A. BRIGGS	R. LALONDE	A. SAVARD
C. L. CHEWICK	R. LAMAVRE	J. WALLACE
R. J. DORION	J. LANGE	L. STRADIOTTO
E. FLEIHMEN	A. LAPIERRE	R. WALLACE
J. L. VOISY	G. LEACH	R. SERERES
W. F. GOODWARD	J. MUNROE	J. LEPAGE
G. GEMUS	N. MURPHY	(RESPONDENTS).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS P.J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: LLOYD J. VALIN, Q.C., BEN WAKELIN, PETER ANGUS FOR THE APPLICANTS, ROY JAMES, PETER BOXMA FOR THE RESPONDENTS.

DECISION OF THE BOARD: JANUARY 21, 1969.

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST THE NAMED RESPONDENTS FOR ENGAGING IN AN UNLAWFUL STRIKE.

2. SINCE THE RESPONDENTS W. ROQUE, G. HALL, R. WALLACE, C. BOIVIN, R. JOHNSTON, J. L. VOISY, N. MURPHY, R. HOULE WERE NOT PROPERLY SERVED WITH NOTICE OF THESE PROCEEDINGS, THIS APPLICATION WITH RESPECT TO THE AFOREMENTIONED PERSONS, IS WITHDRAWN AT THE REQUEST OF THE APPLICANTS WITH CONSENT OF THE BOARD.

3. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE NAMED RESPONDENTS OTHER THAN THOSE SET OUT IN PARAGRAPH TWO ABOVE FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED:

THAT THE SAID P. BOXMA, S. E. BEAUCHAMP, L. BEDARD, E. BARBEAU, P. L. ADAM, L. J. BEAUSOLEIL, R. BLEAU, N. A. BOULARD, R. A. BRIGGS, G. L. CHEWICK, R. J. DORION, E. FLEIHMEN, W. F. GOODWARD, G. GEMUS, C.O. GUINDON, A. KERR, C. LAFERRIERE, J. P. LAFERRIERE, P. LAJEUNESSE, J. LALONDE, R. LALONDE, R. LAMAVRE, J. LANGE, A. LAPIERRE, G. LEACH, J. MUNROE, T. G. LOVE, A. NEVEN, A. PARADIS, G. PLAYFORD, A. RAYMOND, G. ROBERTSON, G. ROSSI, A. SAVARD, A. SAVARD, L. STRADIOTTO, R. WALLACE, R. SERERES AND J. LEPAGE DID AT THE APPLICANT'S INTERNAL NICKEL COMPANY LIMITED IRON ORE RECOVERY PLANT PROJECT ADJACENT TO COPPER CLIFF, CONTRAVENE SECTION 54(1) OF THE LABOUR RELATIONS ACT IN THAT BEING EMPLOYEES OF

THE APPLICANTS BOUND BY A COLLECTIVE AGREEMENT,
AND WHILE THE COLLECTIVE AGREEMENT WAS IN
OPERATION, DID ENGAGE IN A STRIKE COMMENCING ON
OR ABOUT DECEMBER 16TH, 1968.

4. THE APPROPRIATE DOCUMENTS WILL ISSUE.

INDEXED ENDORSEMENTS - SECTION 65

15271-68-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) v.
DUNWICH-DUTTON PUBLIC SCHOOL BOARD (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: E. B. JOLLIFFE, Q.C., AND FRED H.
PYKE FOR THE COMPLAINANT; M. J. HENNESSEY, MISS MARGARET LEITCH
AND ALISTAIR LITTLEJOHN FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN, R. F. EGAN, AND BOARD MEMBER H.F. IRWIN:
JANUARY 13, 1969.

1. THIS IS A COMPLAINT ORIGINATING UNDER SECTION 65 OF THE ACT IN WHICH THE COMPLAINANT STATES THAT THE AGGRIEVED PERSON, RONALD BEDFORD, HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTIONS 52, 50 (A) (B) (C) OF THE LABOUR RELATIONS ACT. RONALD BEDFORD WAS DISCHARGED BY THE RESPONDENT BY NOTICE DATED OCTOBER 15, 1968, EFFECTIVE NOVEMBER 15, 1968. THE COMPLAINANT REQUESTS REINSTATEMENT OF RONALD BEDFORD TO PERMANENT EMPLOYMENT WITH THE DUNWICH-DUTTON PUBLIC SCHOOL BOARD.

2. AT THE TIME OF HIS DISMISSAL, BEDFORD WAS EMPLOYED AS A JANITOR BY THE RESPONDENT AND HAD BEEN SO EMPLOYED FOR APPROXIMATELY $2\frac{1}{2}$ YEARS PRIOR THERETO.

3. THE REASONS GIVEN FOR THE DISCHARGE IN THE NOTICE WERE THAT BEDFORD FELT HE HAD NO TIME TO CLEAN THE PORTABLE CLASS ROOMS WITHOUT REMUNERATION, AND BECAUSE HE WOULD NOT COOPERATE WITH THE HEAD CUSTODIAN, MR. ALBERT JONCKHEERE. MR. BEDFORD WAS EMPLOYED UNDER THE TERMS OF A WRITTEN AGREEMENT WITH THE RESPONDENT DATED THE 23RD MAY, 1968. THE EVIDENCE INDICATES THAT AT THE TIME THIS AGREEMENT WAS SIGNED, THE PORTABLE CLASS ROOMS REFERRED TO IN THE NOTICE HAD NOT BEEN INSTALLED ON THE SCHOOL PREMISES. IT IS CLEAR, HOWEVER, THAT THERE WAS A DISCUSSION BETWEEN BEDFORD AND THE SCHOOL BOARD CONCERNING THE POSSIBILITY

OF THE ADDITION OF TWO PERMANENT ROOMS OR TWO PORTABLE CLASS ROOMS AT THE TIME OF THE SIGNING OF THE CONTRACT. AS IT TURNED OUT, THE ADDITIONAL CLASS ROOMS WERE PORTABLES AND NOT PERMANENT ADDITIONS. THEY WERE PUT INTO OPERATION AT THE COMMENCEMENT OF THE SCHOOL YEAR IN SEPTEMBER.

4. ONE OF THE FUNDAMENTAL QUESTIONS INVOLVED IN THIS ISSUE HAS TO DO WITH THE CLEANING OF THESE PORTABLES. THE CONTRACT SIGNED ON MAY 23RD MAKES NO DIRECT REFERENCE TO THE CLEANING OF PORTABLE CLASS ROOMS, BUT MAKES DETAILED REFERENCE TO THE DUTIES REQUIRED OF BEDFORD WHICH WOULD APPEAR TO INCLUDE ALL CLASS ROOMS WHETHER PORTABLE OR OTHERWISE. WHETHER IT IN FACT DOES OR NOT IS NOT REALLY A MATTER FOR THIS BOARD TO DECIDE.

5. BEDFORD REFUSED TO CLEAN THE PORTABLE CLASS ROOMS UNDER THE TERMS OF THE CONTRACT AND ATTEMPTED TO RENEGOTIATE TERMS FOR INCREASED REMUNERATION OR PROVISION FOR CERTAIN TIME OFF IF HE WAS TO DO THE WORK OF CLEANING THE PORTABLES.

6. IN ADDITION TO BEDFORD, THE SCHOOL BOARD HAD HIRED ALBERT JONCKHEERE AS HEAD JANITOR IN JUNE OF 1968. HE HAD INSTRUCTED BEDFORD TO CLEAN THE PORTABLES, BUT ACCORDING TO HIS TESTIMONY, AND THERE IS NO DISPUTE ON THE POINT FROM BEDFORD THE LATTER REFUSED TO DO THIS WORK. JONCKHEERE ALSO TESTIFIED THAT HE ATTEMPTED TO INSTRUCT BEDFORD IN THE PROPER METHOD OF CLEANING CLASS ROOMS, BUT THAT BEDFORD REFUSED TO FOLLOW THE INSTRUCTIONS. IN FACT, WHEN JONCKHEERE FIRST APPEARED ON THE SCENE, BEDFORD MADE IT CLEAR TO HIM THAT HE WOULD TAKE NO ORDERS FROM ANYBODY, EVEN FROM THE PRINCIPAL. BEDFORD STATED THAT HE WOULD ONLY DO THE WORK IN THE PORTABLES ON HIS OWN CONDITIONS. THE RESULT WAS THAT THE PORTABLES BECAME A MATTER OF SERIOUS CONCERN FOR THE SCHOOL TEACHERS AND THE SCHOOL BOARD BECAUSE OF THE LACK OF CLEANLINESS. AN APPEAL WAS MADE BY MR. LITTLEJOHN, CHAIRMAN OF THE SCHOOL BOARD, TO MR. BEDFORD TO AT LEAST TO HIS SHARE OF THE WORK. THIS REQUEST WAS MET BY THE DEMAND OF BEDFORD FOR EXTRA REMUNERATION OR SOME ADJUSTMENT AS TO TIME.

7. THE FOREGOING IS A SUMMARY OF THE BACKGROUND SITUATION CONCERNING WHICH THERE IS LITTLE OR NO DISPUTE BETWEEN THE PARTIES. IT WAS THE POSITION OF THE RESPONDENT THAT THE IMPASSE WITH RESPECT TO THE CLEANING OF THE PORTABLE SCHOOL ROOMS WAS THE SOLE CAUSE OF THE DISMISSAL OF BEDFORD BY THE BOARD.

8. THE UNION, ON THE OTHER HAND, WHILE NOT DENYING THE FACT THAT THERE WAS A RUNNING DISPUTE BETWEEN BEDFORD AND THE SCHOOL BOARD, PARTICULARLY IN THE PERSON OF THE CHAIRMAN, LITTLEJOHN, WITH RESPECT TO CLEANING THE PORTABLES, ALLEGES THAT THE TRUE REASON FOR THE DISCHARGE WAS BECAUSE OF UNION ACTIVITIES ON THE PART OF BEDFORD.

9. EVIDENCE WAS OFFERED BY THE COMPLAINANT WITH RESPECT TO AN ORGANIZATIONAL MEETING HELD IN WEST LORNE IN JUNE OF 1968. THIS MEETING WAS ADDRESSED BY MR. PYKE, A REPRESENTATIVE OF THE COMPLAINANT, AND WAS ATTENDED BY BUS DRIVERS FROM WEST LORNE AND ADJACENT DISTRICTS. IN ATTENDANCE WERE NORMAN SHOEMAKER AND JAMES WEST, BOTH OF WHOM ARE BUS DRIVERS EMPLOYED BY DUNWICH-DUTTON PUBLIC SCHOOL BOARD. THESE EMPLOYEES APPEARED AS WITNESSES AT THE HEARING AND TESTIFIED THAT AT A MEETING HELD IN AUGUST 1968 BETWEEN THE COMPLAINANT AND ITS BUS DRIVERS, MR. SHOEMAKER ADVISED THE COMPLAINANT OF THE JUNE MEETING IN WEST LORNE AND OF ITS PURPOSE. MR. SHOEMAKER STATED THAT MR. LITTLEJOHN REACTED TO THIS NEWS WITH THE STATEMENT THAT HE WOULD RESIGN RATHER THAN WORK WITH THE UNION. MR. WEST'S TESTIMONY CONFIRMED THAT OF MR. SHOEMAKER, AND WE HAVE NO DIFFICULTY IN ACCEPTING THE TESTIMONY OF THESE EMPLOYEES. MR. WEST STATED THAT MR. HAWKINS, ANOTHER MEMBER OF THE BOARD, HAD REMARKED THAT HE THOUGHT THE DRIVERS WOULD BE BETTER OFF WITHOUT A UNION. IT IS PERHAPS WORTHY OF NOTE HOWEVER THAT NO REFERENCE WAS MADE TO THIS INCIDENT IN THE PARTICULARS SET OUT IN THE COMPLAINT AND THAT NO OBJECTION WAS RAISED TO THE INTRODUCTION OF EVIDENCE WITH RESPECT THERETO. WE ARE OF THE OPINION THAT THIS IS THE TRUE MEASURE OF THE SIGNIFICANCE OF THOSE REMARKS.

10. PARTICULARS SET OUT IN THE COMPLAINT ARE AS FOLLOWS:

"ON OR ABOUT OCTOBER 15TH, 1968 THE AGGRIEVED PERSON WAS DEALT WITH BY LETTER OVER SIGNATURE OF MISS M. LEITCH - SECRETARY-TREASURER OF THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTIONS 52, 50 (A) (B) (C) OF THE LABOUR RELATIONS ACT IN THAT HE DID ON BEHALF OF THE RESPONDENT:

1. ADVERTISED IN LOCAL NEWSPAPER FOR A NEW EMPLOYEE PRIOR TO NOTICE BEING GIVEN TO MR. BEDFORD.

2. A MEETING WAS ASKED FOR BY MR. BEDFORD FOR INFORMATION OF ABOVE ADVERTISEMENT. THE CHAIRMAN OF THE SCHOOL BOARD DID NOT APPEAR.

3. ORDERED MR. BEDFORD TO TAKE ON ADDITIONAL WORK SINCE JOINING THE UNION. THIS CREATED A SITUATION OF NOT BEING ABLE TO COMPLETE ASSIGNED DUTIES.

4. SINCE MR. BEDFORD HAS SECURED APPLICATIONS FOR MEMBERSHIP IN THE UNION FOR THE REST OF THE EMPLOYEES THEIR JOBS ARE ALSO ADVERTISED IN THE LOCAL PAPER."

11. THERE IS NO DISPUTE THAT AT A MEETING OF THE RESPONDENT BOARD ON OCTOBER 15, 1968, A RESOLUTION WAS PASSED RESULTING IN THE LETTER DATED OCTOBER 15, 1968 ADVISING MR. BEDFORD OF HIS DISMISSAL. THE EVIDENCE OF MR. LITTLEJOHN AND OF MISS M. LEITCH, TOGETHER WITH THAT OF MR. HEENEY, PRINCIPAL OF THE SCHOOL WAS TO THE EFFECT THAT THE RESOLUTION WAS PASSED BECAUSE OF THE SITUATION WITH RESPECT TO BEDFORD'S REFUSAL TO CLEAN THE PORTABLE CLASS ROOMS AND THE CONSEQUENT UNSANITORY CONDITION IN WHICH THEY WERE FOUND ON INSPECTION BY THE BOARD FOLLOWING COMPLAINTS BY THE TEACHING STAFF AND JONCKHEERE, THE HEAD JANITOR. ALL OF THESE WITNESSES TESTIFIED THAT AT NO TIME WAS THERE ANY DISCUSSION WITH RESPECT TO THE UNION OR ANY CONNECTION THAT BEDFORD MAY HAVE HAD WITH THE UNION. WE SEE NO REASON TO DOUBT THEIR TESTIMONY.

12. THE ADVERTISEMENT FOR A JANITOR APPEARED IN A LOCAL NEWSPAPER DATED OCTOBER 16, 1968, WHEREAS THE NOTICE TO MR. BEDFORD, ALTHOUGH DATED OCTOBER 15, 1968, WAS NOT RECEIVED BY HIM UNTIL OCTOBER 21ST. IN THE MEANTIME, HE HAD SEEN THE ADVERTISEMENT IN THE PAPER.

13. THE MEETING ALLUDED TO IN PARAGRAPH NO. 2 OF THE PARTICULARS SET OUT ABOVE WAS IN FACT A REQUEST BY MR. BEDFORD TO THE WIFE OF THE CHAIRMAN OF THE SCHOOL BOARD THAT HE COME TO BEDFORD'S FARM ON SUNDAY TO EXPLAIN TO HIM THE MEANING OF THE ADVERTISEMENT. THIS WAS THE ONLY REQUEST FOR A MEETING MADE BY BEDFORD.

14. IN THE PARAGRAPH NO. 3 OF THE COMPLAINT, IT IS ALLEGED THAT THE BOARD ORDERED MR. BEDFORD TO TAKE ON ADDITIONAL WORK SINCE JOINING THE UNION. IT GOES ON TO SAY THAT THIS CREATED THE SITUATION OF NOT BEING ABLE TO COMPLETE ASSIGNED DUTIES. IT IS QUITE CLEAR ON THE EVIDENCE THAT THE ADDITIONAL WORK REFERRED TO HAD TO DO WITH THE CLEANING OF THE PORTABLES. THIS WORK WAS ASSIGNED TO MR. BEDFORD AT THE COMMENCEMENT OF THE SCHOOL YEAR IN SEPTEMBER AND CLEARLY PRECEDED HIS JOINING THE UNION. MR. PYKE ADVISED THAT MR. BEDFORD CALLED HIM IN SEPTEMBER AND EXPRESSED AN INTEREST IN JOINING THE UNION. HE COMPLAINED AT THAT TIME ABOUT THE WORKLOAD. THIS STATEMENT OF PYKE'S OBVIOUSLY REFUTES THE SUGGESTION THAT THE WORKLOAD WAS INCREASED SUBSEQUENT TO BEDFORD'S JOINING THE UNION. PYKE'S EVIDENCE WAS THAT BEDFORD DID NOT JOIN THE UNION UNTIL MID-SEPTEMBER. INSOFAR AS THE ALLEGATION THAT THE ADDITIONAL DUTIES PREVENTED BEDFORD FROM COMPLETING ASSIGNED DUTIES, IT MUST BE OBSERVED THAT HE HAD NOT PERFORMED ANY WORK ON THE PORTABLES SO THAT THERE WAS IN FACT NO INTERFERENCE WITH HIS OTHER DUTIES.

15. THE FOURTH STATEMENT CONTAINED IN THE COMPLAINT ALLEGES THAT SINCE BEDFORD SECURED APPLICATIONS FOR MEMBERSHIP IN THE UNION FOR THE REST OF THE EMPLOYEES, THEIR JOBS WERE ADVERTISED IN THE LOCAL PAPER. THESE OTHER EMPLOYEES WERE ALL BUS DRIVERS.

16. THERE WAS, IN FACT, AN ADVERTISEMENT INSERTED IN THE LOCAL PAPER ON OCTOBER 16, 1968 INDICATING THAT BUS DRIVERS, BOTH FULL-TIME AND PART-TIME, WERE REQUIRED BY THE SCHOOL BOARD. THERE IS NO EVIDENCE, HOWEVER, THAT AT THE TIME THE ADVERTISEMENT WAS INSERTED, THE BUS DRIVERS HAD BEEN SIGNED UP FOR THE UNION BY MR. BEDFORD. THE TESTIMONY, ON THE CONTRARY, INDICATES THAT A MEETING OF BUS DRIVERS WAS CALLED SUBSEQUENT TO THE INSERTION OF THE ADVERTISEMENT AND BECAUSE OF IT. MR. PYKE ATTENDED THIS MEETING AND THE EVIDENCE IS THAT IT WAS AT THIS MEETING WHICH WAS HELD SOMETIME IN THE WEEK FOLLOWING THE INSERTION OF THE ADVERTISEMENT THAT THE BUS DRIVERS BECAME MEMBERS OF THE UNION.

17. TESTIMONY WAS GIVEN BY LITTLEJOHN TO THE EFFECT THAT THE ADVERTISEMENT FOR THE BUS DRIVERS WAS PLACED, NOT BECAUSE OF NEED FOR FULL-TIME DRIVERS, BUT BECAUSE OF DIFFICULTIES WITH RELIEF DRIVERS. AS AN EXAMPLE OF DIFFICULTIES, HE STATED THAT IT HAD BEEN NECESSARY FOR HIM TO "KEEP SHOP" IN ORDER TO ALLOW ONE DRIVER THE PROPRIETOR OF A BUSINESS TO DRIVE THE SCHOOL BUS.

18. THE SEQUENCE OF EVENTS SET OUT ABOVE INDICATES THAT THE DIFFICULTIES WITH RESPECT TO BEDFORD AND THE PORTABLE CLASS ROOMS AROSE AND WAS OF CONCERN TO THE BOARD PRIOR TO BEDFORD'S ENLISTMENT IN THE UNION. THE PRECISE DATE OF BEDFORD'S JOINING THE UNION WAS NOT FIRMLY ESTABLISHED, BUT IT IS QUITE EVIDENT FROM HIS TESTIMONY AND THAT OF MR. PYKE THAT IT WAS AFTER THE COMMENCEMENT OF THE SCHOOL YEAR AND WELL AFTER THE TIME WHEN THE DIFFICULTIES WITH RESPECT TO "EXTRA WORK" AROSE. INDEED IT WAS APPARENTLY ONE OF THE REASONS WHY BEDFORD SOUGHT MR. PYKE AND THE UNION. THERE IS NO EVIDENCE FROM WHICH IT MIGHT BE PROPERLY INFERRED THAT THE BOARD OR MR. LITTLEJOHN WAS AWARE THAT BEDFORD WAS A MEMBER OF THE UNION UNTIL AFTER THIS COMPLAINT MATERIALIZED. BEDFORD TESTIFIED THAT HE HAD TOLD HEENEY HE HAD JOINED THE UNION. THIS, HE SAID, WAS AFTER THE ADVERTISEMENT APPEARED IN OCTOBER. MR. HEENEY IN HIS TESTIMONY STATED THAT HE KNEW NOTHING OF BEDFORD'S MEMBERSHIP OR OF THE UNION ACTIVITIES UNTIL THE GREEN NOTICE, POSTED ON INSTRUCTION BY THE BOARD, HAD APPEARED IN THE SCHOOL. MR. PYKE AGREED WITH THE SUGGESTION OF COUNSEL FOR THE RESPONDENT THAT IT WOULD BE FAIR TO SAY THAT LITTLEJOHN DID NOT KNOW BEDFORD WAS IN THE UNION UNTIL AFTER HE, PYKE, CALLED LITTLEJOHN AFTER BEDFORD'S DISMISSAL.

19. HAVING CONSIDERED ALL OF THE EVIDENCE, THE BOARD IS NOT SATISFIED THAT THE COMPLAINANT HAS ESTABLISHED THAT THE AGGRIEVED PERSON WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT.

20. THE COMPLAINT IS ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER O. HODGES:

JANUARY 13, 1969.

I DISSENT.

ON THE BASIS OF THE EVIDENCE BEFORE ME, AND CONSIDERING THE GRAPEVINE COMMUNICATION SYSTEM PREVAILING IN SMALL COMMUNITIES SUCH AS THE LOCATION OF THIS INCIDENT, I CONCLUDE ON THE BALANCE OF PROBABILITIES THAT MEMBERS OF THE SCHOOL BOARD WERE AWARE OF THE UNION ACTIVITIES OF BEDFORD. HIS DISMISSAL, IN MY OPINION, WAS MOTIVATED PRIMARILY BY AN ANTI-UNION BIAS OF SCHOOL BOARD MEMBERS. BEDFORD'S ATTEMPT TO BALANCE AN ADDITIONAL WORKLOAD WITH A REQUEST FOR TIME OFF ON SATURDAY APPEARS REASONABLE AND HARDLY GROUNDS FOR DISMISSAL, PARTICULARLY WHEN THE SCHOOL BOARD CHAIRMAN IS A NEIGHBOUR AND HAS KNOWN BEDFORD SINCE CHILDHOOD.

I THEREFORE, WOULD REINSTATE BEDFORD IN THE SAME OR LIKE EMPLOYMENT WITH FULL COMPENSATION FOR LOSS.

15284-68-U: RETAIL AND FOOD EMPLOYEES' LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (COMPLAINANT) v. L. & W DISTRIBUTORS LTD., CARRYING ON BUSINESS AS N & D SUPERMARKET (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: L. V. PATHÉ AND L. W. DOWLING FOR THE COMPLAINANT; DANNY MANOJLOVICH AND TERRY DAVISON FOR THE RESPONDENT.

DECISION OF THE BOARD:

JANUARY 10, 1969.

1. THIS IS A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT ALLEGES THAT ELLEN SWAN, ELIZABETH DREER, EDWARD TRACEY AND DERRICK PETRO WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50 (A), (B) AND (C) OF THE LABOUR RELATIONS ACT. THE COMPLAINANT REQUESTS THAT THE RESPONDENT BE REQUIRED TO REINSTATE THE ABOVE NAMED AGGRIEVED PERSONS IN EMPLOYMENT WITH FULL COMPENSATION FOR LOST WAGES.

2. THE EVIDENCE INDICATES THAT THE COMPLAINANT CARRIED ON A UNION ORGANIZATIONAL CAMPAIGN ON THE PREMISES OF THE RESPONDENT IN THE LATTER PART OF OCTOBER 1968. IT WAS ESTABLISHED THAT ALL OF THE AGGRIEVED PERSONS HAVE JOINED THE UNION AND THAT ELIZABETH DREER, EDWARD TRACEY AND DERRICK PETRO HAD TAKEN AN ACTIVE PART IN THE CAMPAIGN. ALL OF THE AGGRIEVED PERSONS WERE LONG SERVICE EMPLOYEES OF THE RESPONDENT, HAVING IN MIND THE FACT THAT THE BUSINESS HAD BEEN IN OPERATION ONLY THREE YEARS.

3. ON TUESDAY, OCTOBER 29, 1968, A MEETING OF ALL EMPLOYEES OF THE RESPONDENT, EXCEPT THOSE EMPLOYED IN THE MEAT DEPARTMENT, WERE CALLED TO A MEETING. THE EMPLOYEES IN THE MEAT DEPARTMENT ARE COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE COMPLAINANT. THE COMPLAINANT WAS CERTIFIED AS BARGAINING AGENT FOR THE EMPLOYEES OF THE MEAT DEPARTMENT IN AUGUST 1967.

4. THE OSTENSIBLE PURPOSE OF THE MEETING WAS TO EXPLAIN THE TERMS OF A PENSION AND WELFARE SCHEME WHICH HAD COME INTO EFFECT IN THE STORE. THE REPRESENTATIVE OF THE INSURANCE COMPANY ADDRESSED THE EMPLOYEES ON THIS MATTER AND THEN LEFT THE MEETING. MR. DANNY MANOJLOVICH, THE MANAGER AND ONE OF THE OWNERS OF THE STORE THEN ADDRESSED THE MEETING.

5. AMONG OTHER REMARKS, MR. MANOJLOVICH STATED THAT HE WOULD LIKE, OR WAS ATTEMPTING, TO RUN THE ESTABLISHMENT AS A FAMILY. HE WENT ON TO SAY THAT THERE WERE PEOPLE IN THE SO CALLED FAMILY WHO, IN SPITE OF ALL WHAT WAS DONE FOR THEM, WOULD NOT CO-OPERATE. HE TOLD THE EMPLOYEES THAT HE HAD PUT BREAD AND BUTTER ON THEIR PLATES, BUT THAT SOMEONE HAD STABBED HIM IN THE BACK. HE STATED THAT HE DID NOT WANT ANY STRANGERS TELLING HIM HOW TO RUN THE STORE. IT WAS GIVEN IN EVIDENCE THAT HIS LANGUAGE DURING THE COURSE OF THIS SPEECH WAS, AT TIMES, CRUDE. NO PURPOSE CAN BE SERVED IN REPRODUCING THE LANGUAGE AT THIS STAGE.

6. AT THE CONCLUSION OF THIS SPEECH, MR. MANOJLOVICH CALLED UP THE FOUR AGGRIEVED PERSONS IN FRONT OF ALL THE OTHER EMPLOYEES AND HANDED THEM ENVELOPES CONTAINING CHEQUES COVERING THEIR HOURS WORK TO THAT POINT, PLUS 2% SEVERANCE OR HOLIDAY PAY. AFTER THE CHEQUES WERE GIVEN OUT, THE FOUR AGGRIEVED WERE SHOWN TO THE DOOR, BUT THE REMAINING EMPLOYEES WERE REQUESTED TO REMAIN. THERE WAS NO EVIDENCE AS TO WHAT, IF ANYTHING, WAS SAID TO THE GROUP AFTER THE DEPARTURE OF THE FOUR AGGRIEVED.

7. MR. MANOJLOVICH GAVE EVIDENCE ON HIS OWN BEHALF.

HIS EXPLANATION OF THE TERMINATION OF THE FOUR EMPLOYEES WAS BASED ON THE NECESSITY TO CUT DOWN STAFF BECAUSE OF THE ECONOMIC SITUATION, COUPLED WITH THE LACK OF COOPERATION ON THE PART OF ELLEN SWAN, ELIZABETH DREER AND EDWARD TRACEY AND THE UNSATISFACTORY WORK OF DERRICK PETRO. HE EXPLAINED THAT HIS REFERENCE TO "STRANGERS RUNNING HIS BUSINESS" HAD TO DO WITH HIS PARTNERS AND NOT WITH ANY INTRUSION OF THE UNION INTO HIS AFFAIRS. HE EXPLAINED THE DISMISSAL OF THE FOUR AGGRIEVED IN FRONT OF THE FELLOW EMPLOYEES BY SAYING THAT THEY HAPPENED TO BE TOGETHER AND HE JUST GAVE THEM THEIR CHEQUES.

8. HAVING REGARD TO ALL OF THE EVIDENCE, WE ARE COMPELLED TO FIND THAT THE DISMISSAL OF THE EMPLOYEES IN THE CIRCUMSTANCES OUTLINED ABOVE CONSTITUTED WHAT AMOUNTS TO A PUBLIC DISMISSAL OF THOSE EMPLOYEES BECAUSE OF THEIR UNION MEMBERSHIP AND ACTIVITY AND THAT IT WAS ALSO DONE FOR THE PURPOSE OF DISCOURAGING UNION MEMBERSHIP ON THE PART OF THE REMAINING EMPLOYEES.

9. THE BOARD FINDS THEREFORE THAT THE COMPLAINANT HAS ESTABLISHED THAT THE AGGRIEVED EMPLOYEES WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50 OF THE LABOUR RELATIONS ACT, AND MAKES THE FOLLOWING DETERMINATIONS:

- (a) ELLEN SWAN, ELIZABETH DREER, EDWARD TRACEY AND DERRICK PETRO SHALL BE FORTHWITH REINSTATED IN THE SAME POSITION OR A LIKE POSITION THERETO AS EACH OF THEM HELD ON THE DATE OF THEIR DISCHARGE.
- (b) AS COMPENSATION FOR LOSS OF WAGES FROM OCTOBER 29, 1968 TO JANUARY 3, 1969, THE RESPONDENT FORTHWITH SHALL PAY TO EACH OF THE AGGRIEVED PERSONS THE AMOUNT OF MONEY SET OUT OPPOSITE TO HIS OR HER NAME, AS FOLLOWS:

ELLEN SWAN	\$665.00
ELIZABETH DREER	617.50
EDWARD TRACEY	65.00
DERRICK PETRO	405.00

- (c) THE PARTIES SHALL MEET FORTHWITH TO AGREE UPON THE AMOUNT OF LOSS OF EARNINGS, IF ANY, SUSTAINED BY ELLEN SWAN, ELIZABETH DREER, EDWARD TRACEY AND DERRICK PETRO BETWEEN THE 3RD JANUARY, 1969 AND THE DATE OF THEIR ACTUAL RE-EMPLOYMENT BY THE RESPONDENT. IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES WITHIN 7 DAYS AFTER THE RELEASE OF THIS DECISION OR WITHIN SUCH FURTHER PERIODS AS THE PARTIES MAY MUTUALLY AGREE

UPON, THE AMOUNT OF ANY SUCH FURTHER COMPENSATION PAYABLE, IF ANY, WILL BE DETERMINED BY THE BOARD UPON THE MOTION OF EITHER PARTY FOR A FURTHER HEARING FOR THAT PURPOSE.

15375-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. FEDERAL BOLT & NUT CORPORATION LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS H.F. IRWIN AND P.J. O'KEEFFE.

APPEARANCES AT THE HEARING: LORNE INGLE AND OTTO URBANOVICS FOR THE COMPLAINANT; W. S. COOK, L. GILES AND J. KELLY FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN, RORY F. EGAN AND BOARD MEMBER P. J. O'KEEFFE: JANUARY 20, 1969.

1. THIS IS A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT ALLEGES THAT JOHN GOULD HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50(A) OF THE LABOUR RELATIONS ACT. GOULD BECAME AN EMPLOYEE OF THE RESPONDENT ON SEPTEMBER 3, 1968 AND JOINED THE UNION SHORTLY THEREAFTER. HE WAS DISCHARGED ON NOVEMBER 22, 1968 BY MR. GILES, THE GENERAL FOREMAN.

2. THE EVIDENCE ESTABLISHED THAT DURING THE COURSE OF HIS EMPLOYMENT, GOULD HAD BEEN SPOKEN TO SEVERAL TIMES CONCERNING HIS HABIT OF TALKING WHILE ON THE JOB AND THEREBY WASTING HIS TIME AND THAT OF OTHER EMPLOYEES. MR. GILES STATED THAT THIS WAS THE CAUSE OF GOULD'S DISCHARGE. IT WAS, OF COURSE, THE COMPLAINANT'S POSITION THAT THIS WAS NOT THE CAUSE OF DISCHARGE, BUT THAT GOULD WAS DISCHARGED FOR UNION ACTIVITIES.

3. GOULD GAVE EVIDENCE WHICH, IF BELIEVED, CLEARLY ESTABLISHED AN ADVERSE CONCERN ABOUT AND OPPOSITION TO THE UNION ON THE PART OF GILES. IT WOULD ALSO ESTABLISH THAT GILES WAS FULLY AWARE OF GOULD'S UNION MEMBERSHIP. TESTIMONY OFFERED BY THE COMPLAINANT'S WITNESS, BRIAN HARTLEY, WAS SIMILAR TO THAT OF THE AGGRIEVED AND LEADS COMPELLINGLY TO A LIKE CONCLUSION WITH RESPECT TO GILES ANXIETY TO KEEP THE PLANT FREE OF THE UNION.

4. IN HIS EVIDENCE GILES STATED THAT AT THE TIME OF GOULD'S EXIT INTERVIEW HE, GILES, WAS NATURALLY CURIOUS ABOUT THE UNION AND INQUIRED OF GOULD IF ALL THE TALKING HAD BEEN ABOUT THE UNION. GOULD'S ACCOUNT OF THE REFERENCES MADE BY GILES TO THE UNION INDICATED THAT THEY WERE CONSIDERABLY MORE DETAILED, POINTED AND PERSONAL.

5. ON REVIEWING ALL THE EVIDENCE GIVEN BY HARTLEY AND GOULD ON BEHALF OF THE COMPLAINANT AND HAVING NOTED THAT THERE WERE MARKED DISCREPANCIES BETWEEN THE ACCOUNTS OF WHAT OCCURED ON THE DATE OF THE DISMISSAL AS GIVEN BY THE RESPONDENT'S OWN WITNESSES, KENNEDY AND MATHEWS, AND THAT GIVEN BY GILES, WE ARE CONVINCED OF THE VERACITY OF THE AGGRIEVED'S EVIDENCE AND PREFER IT WHEREVER ANY CONFLICT APPEARS.

6. HAVING REGARD TO ALL THE EVIDENCE, THE BOARD FINDS THAT JOHN GOULD WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50(A) OF THE LABOUR RELATIONS ACT. THE BOARD CONSEQUENTLY DETERMINES:

- (A) THE RESPONDENT SHALL FORTHWITH RE-INSTATE AND RE-EMPLOY JOHN GOULD IN THE SAME OR LIKE EMPLOYMENT AS HE HAD AT THE DATE OF HIS DISCHARGE;
- (B) AS COMPENSATION FOR LOSS OF WAGES AND EMPLOYMENT BENEFITS FROM THE DATE OF DISCHARGE UNTIL JANUARY 10, 1969, THE RESPONDENT SHALL FORTHWITH PAY TO JOHN GOULD THE SUM OF \$807.00;
- (C) THE RESPONDENT AND THE COMPLAINANT SHALL FORTHWITH MEET WITH A VIEW TO AGREING ON THE AMOUNT OF EARNINGS AND EMPLOYMENT BENEFITS, IF ANY, NOW SUSTAINED OR WHICH MAY BE HEREAFTER SUSTAINED BY JOHN GOULD BETWEEN JANUARY 10, 1969 AND THE DATE OF HIS ACTUAL REHIRING.

IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES WITHIN 7 DAYS AFTER THE RELEASE OF THIS DECISION OR WITHIN SUCH FURTHER PERIODS AS THE PARTIES MAY MUTUALLY AGREE UPON, THE AMOUNT OF ANY SUCH FURTHER COMPENSATION PAYABLE, IF ANY, WILL BE DETERMINED BY THE BOARD UPON THE MOTION OF EITHER PARTY FOR A FURTHER HEARING FOR THAT PURPOSE.

DECISION OF BOARD MEMBER H.F. IRWIN:

JANUARY 20, 1969.

I DISSENT.

ON THE EVIDENCE ADDUCED AT THE HEARING, I WOULD HAVE FOUND THAT THE COMPLAINANT JOHN GOULD, A PROBATIONARY EMPLOYEE, WAS DISMISSED FOR EXCESSIVE TALKING TO OTHER PERSONS DURING HIS WORKING HOURS. HE HAD BEEN PREVIOUSLY WARNED BY HIS IMMEDIATE FOREMAN, DOUGLAS KENNEDY, AND BY THE GENERAL FOREMAN, LORNE GILES, TO CEASE THESE ACTIVITIES OR HE WOULD BE DISCHARGED. GOULD ADMITTED DOING THE TALKING AND IN BEING SO WARNED.

IN THE CIRCUMSTANCES, I WOULD HAVE DISMISSED THE COMPLAINT.

15381-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V.
R. REININGER & SONS LTD. (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
P.J. O'KEEFFE AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: LORNE INGLE AND F. RAO FOR THE
COMPLAINANT, I. H. MCGOWAN AND S. A. CRIFO FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 23, 1969.

1. THE COMPLAINANT HAS COMPLAINED UNDER THE PROVISIONS OF SECTION 65 OF THE LABOUR RELATIONS ACT THAT LOUIS RODERICK WADDEN WAS DISCHARGED BY THE RESPONDENT ON FRIDAY, FEBRUARY 22ND, 1968 CONTRARY TO THE PROVISIONS OF SECTION 50(A) OF THE ACT. THE EVIDENCE CALLED BY THE COMPLAINANT INDICATED THAT THE DISCHARGE OF THE AGGRIEVED PERSON WAS EFFECTED AT A TIME WHICH GAVE RISE TO SUSPICION AS TO THE RESPONDENT'S MOTIVES AND THEREBY CAST AN ONUS OF EXPLANATION ON THE RESPONDENT.

2. THE RESPONDENT CALLED AS WITNESSES ALL PERSONS WHO WERE ALLEGED TO HAVE BEEN CONNECTED WITH THE AGGRIEVED PERSON'S DISCHARGE AND THEIR EVIDENCE ESTABLISHED THAT THE RESPONDENT'S OFFICIALS HAD MADE THEIR DECISION ON NOVEMBER 18TH, 1968 TO TERMINATE THE EMPLOYMENT OF THE AGGRIEVED PERSON FOR CAUSE ON FRIDAY, NOVEMBER 22ND. THIS EVIDENCE WAS CORROBORATED BY DOCUMENTARY EVIDENCE SIGNED BY BOTH THE FOREMAN AND THE PLANT SUPERINTENDENT.

3. THERE WAS NO EVIDENCE WHICH ESTABLISHED THAT THE RESPONDENT WAS CARRYING ON ACTIVITIES IN OPPOSITION TO THE UNION'S ATTEMPTS TO ORGANIZE THE RESPONDENT'S EMPLOYEES NOR WAS THERE EVIDENCE WHICH ESTABLISHED THAT ANY OF THE RESPONDENT'S OFFICIALS HAD KNOWLEDGE OF THE FACT THAT THE AGGRIEVED PERSON WAS ACTIVELY SUPPORTING THE UNION.

4. IN THE CIRCUMSTANCES OUTLINED ABOVE, WE MUST FIND THAT THE RESPONDENT HAS SATISFIED THE ONUS OF EXPLAINING THE REASONS FOR THE DISCHARGE OF THE AGGRIEVED PERSON AND ON ALL THE EVIDENCE, THE BOARD FINDS THAT THE COMPLAINANT HAS FAILED TO SATISFY THE BOARD THAT LOUIS RODERICK WADDEN WAS DISCHARGED CONTRARY TO SECTION 50(A) OF THE LABOUR RELATIONS ACT.

5. THE COMPLAINT IS THEREFORE DISMISSED.

15558-68-U: LOCAL 800 OF THE UNITED ASSOCIATION OF JOURNEYMAN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (COMPLAINANT) V. THE FOUNDATION COMPANY OF CANADA LIMITED AND A. D. ROSS AND COMPANY LIMITED (RESPONDENTS).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: JANUARY 31, 1969.

1. THIS IS A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT. A FIELD OFFICER WAS APPOINTED TO INQUIRE INTO THE COMPLAINT ON JANUARY 20, 1969 AND HAS NOW REPORTED TO THE BOARD.

2. IT APPEARS FROM THE REPORT OF THE FIELD OFFICER THAT THE COMPLAINANT AND RESPONDENTS ARE PARTIES TO A COLLECTIVE AGREEMENT WHICH IS TO REMAIN IN EFFECT UNTIL APRIL 30, 1969. THE SUBSTANCE OF THE COMPLAINT IS THAT THE RESPONDENTS REQUESTED THE COMPLAINANT TO SUPPLY CERTAIN MECHANICS, THAT THE COMPLAINANT UNION WAS UNABLE TO SUPPLY THE NECESSARY NUMBER OF MECHANICS FROM AMONG ITS OWN MEMBERS AND, PURSUANT TO ARTICLE 8(A) OF THE AGREEMENT, SUPPLIED MECHANICS FROM A SISTER LOCAL, WHICH MECHANICS THE RESPONDENTS REFUSED TO EMPLOY BECAUSE OF THEIR MEMBERSHIP IN THE SAID SISTER LOCAL. ARTICLE 8(A) PROVIDES IN PART AS FOLLOWS:

THE COMPANY AGREES TO HIRE ONLY MEMBERS OF LOCAL 800 AS LONG AS THE UNION IS ABLE TO SUPPLY MECHANICS TO TAKE CARE OF THE NEED OF THE EMPLOYER, AND THE COMPANY WHEN HIRING SHALL GIVE THE UNION FAIR NOTICE OF THEIR REQUIREMENTS, WHICH SHALL BE AT LEAST THREE DAYS. IF THE UNION CANNOT SUPPLY MECHANICS WHO ARE MEMBERS OF THE UNITED ASSOCIATION, LOCAL 800, THE UNION WILL SUPPLY MECHANICS WHO ARE MEMBERS OF THE UNITED ASSOCIATION, BELONGING TO SISTER LOCALS.

3. THE RESPONDENTS CONTEND, INTER ALIA, THAT THE SISTER LOCAL IN QUESTION IS ON STRIKE AGAINST THEM IN ANOTHER AREA AND THAT THEY ARE NOT THEREFORE CALLED UPON TO EMPLOY THE MEMBERS OF SUCH LOCAL, AND, FURTHER, IT IS ALLEGED THAT THE COMPLAINANT HAD MEMBERS OF ITS OWN WHOM IT COULD HAVE SUPPLIED BUT DID NOT, IN ORDER TO GIVE PREFERENCE TO MEMBERS OF THE SISTER LOCAL. THE AGGRIEVED PERSONS IN THIS CASE ARE THE MEMBERS OF THE SISTER LOCAL WHO, IT IS ALLEGED, WERE REFUSED EMPLOYMENT BY THE RESPONDENTS.

4. IT IS CLEAR THE GRIEVANCES HAVE BEEN FILED UNDER THE COLLECTIVE AGREEMENT IN CONNECTION WITH THE ALLEGED REFUSAL TO HIRE. THE GRIEVANCES REQUEST IMMEDIATE EMPLOYMENT OF THE INDIVIDUAL GRIEVORS, TOGETHER WITH LOST PAY. IN ESSENCE, THIS IS THE SAME RELIEF SOUGHT IN THIS COMPLAINT. IT APPEARS, FURTHER, THAT THE REASON THE PRESENT COMPLAINT WAS FILED WAS THAT THE COMPLAINANT IS DISSATISFIED WITH THE WAY THE GRIEVANCE PROVISIONS OF THE COLLECTIVE AGREEMENT HAVE WORKED. IT IS ALLEGED THAT THE COMPANY HAS PAID LITTLE OR NO ATTENTION TO PREVIOUS GRIEVANCES AND THAT LONG AND EXTENDED PERIODS OF TIME HAVE ELAPSED "BEFORE ARBITRATION WAS SET UP". THE BOARD HAS ON A NUMBER OF OCCASIONS MADE IT CLEAR THAT, WHERE COMPLAINANTS OR AGGRIEVED PERSONS HAVE A REMEDY UNDER THE PROVISIONS OF A COLLECTIVE AGREEMENT, IT WILL NOT ENTERTAIN A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT EXCEPT IN EXCEPTIONAL CIRCUMSTANCES. THUS, IN THE HEIST INDUSTRIAL SERVICES CASE, 63 C.L.L.C. PARAGRAPH 16, 263, THE BOARD QUOTED FROM AN EARLIER DECISION, DOMINION STORES LIMITED (BOARD FILE No. 2858-61-U) AS FOLLOWS:

IN THE NATIONAL SHOWCASE COMPANY CASE, (1960) CCH CANADIAN LABOUR LAW REPORTS, 16,185, C.L.S. 76-715, THE BOARD HELD THAT WHERE A COMPLAINT RAISES THE ISSUE THAT A PERSON HAS BEEN DISCHARGED CONTRARY TO THE PROVISIONS OF A COLLECTIVE AGREEMENT, THE MATTER IS ONE TO BE DEALT WITH UNDER THE TERMS OF THE COLLECTIVE AGREEMENT AND NOT BY MEANS OF A HEARING BY THE BOARD UNDER SECTION 65 OF THE ACT. THE COMPLAINANT IN THIS CASE APPEARS TO BE DISSATISFIED WITH THE DISPOSITION OF HIS CASE BY THE TRADE UNION WHICH WAS HIS BARGAINING AGENT. AS THE BOARD HELD IN THE WALLACE BARNES COMPANY CASE, (1961) CCH CANADIAN LABOUR LAW REPORTS, 16,198, C.L.S. 76-742, WHERE EMPLOYEES HAVE CHOSEN A BARGAINING AGENT TO ACT ON THEIR BEHALF, THEY ARE BOUND BY ITS ACTIONS AND, IF A COLLECTIVE AGREEMENT EXISTS, BY THE TERMS OF THAT AGREEMENT. AN EMPLOYEE IN THESE CIRCUMSTANCES MUST SEEK RELIEF UNDER THE AGREEMENT AND NOT BY AN APPLICATION TO THIS BOARD.

REFERENCE IS ALSO MADE TO GENERAL BAKERIES LIMITED, O.L.R.B. MONTHLY REPORT, JANUARY 1967, PAGE 823, REQUEST FOR RECONSIDERATION DENIED O.L.R.B. MONTHLY REPORT, FEBRUARY 1967, PAGE 919; CANADIAN BECHTEL LIMITED, O.L.R.B. MONTHLY REPORT, JUNE 1967, PAGE 292, A CASE, INCIDENTALLY, INVOLVING, AT LEAST INDIRECTLY, THE PRESENT COMPLAINANT.

5. IN OUR VIEW THERE ARE NO EXCEPTIONAL CIRCUMSTANCES IN THIS COMPLAINT WHICH WOULD WARRANT THE BOARD DEPARTING FROM ITS USUAL PRACTICE OF NOT ENTERTAINING A COMPLAINT WHERE AN ALTERNATIVE REMEDY EXISTS UNDER A COLLECTIVE AGREEMENT. CERTAINLY THE DIS-SATISFACTION OF A PARTY TO A COLLECTIVE AGREEMENT WITH THE GRIEVANCE AND ARBITRATION PROCEDURES UNDER THAT AGREEMENT DOES NOT, IN OUR VIEW, CONSTITUTE EXCEPTIONAL CIRCUMSTANCES. AGGRIEVED PERSONS ARE OFTEN DISSATISFIED WITH THE ACTIONS OF THEIR BARGAINING AGENT IN REFUSING TO EITHER PROCESS GRIEVANCES OR CARRY THEM THROUGH TO ARBITRATION. NEVERTHELESS, THE BOARD HAS REFUSED TO ENTERTAIN A COMPLAINT UNDER SECTION 65 IN SUCH CIRCUMSTANCES. SEE, FOR EXAMPLE, RICHARD FREEMAN v. U. A. W., BOARD FILE No. 15377-68-U, DECEMBER, 1968.

6. IF, EVENTUALLY, AN ARBITRATION BOARD HEARING THE GRIEVANCES DECIDES IT HAS NO JURISDICTION TO AWARD THE RELIEF SOUGHT BY THE INDIVIDUAL GRIEVORS AS DISTINCT FROM THE COMPLAINANT UNION, THEN IT WOULD BE OPEN TO SUCH PERSONS TO MAKE ANOTHER COMPLAINT TO THE BOARD. SEE GENERAL BAKERIES LIMITED, SUPRA. A NEW COMPLAINT WAS SUBSEQUENTLY ENTERTAINED. (SEE BOARD FILE No. 12862-66-U.)

7. IN THE RESULT, THE COMPLAINT IS HEREBY DISMISSED.

15583-68-U: ANTHONY MANCHINI (COMPLAINANT) v. J. F. O'NEILL (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: JANUARY 24, 1969.

1. BY A COMPLAINT DATED JANUARY 21ST, 1969, THE COMPLAINANT COMPLAINS THAT ON MAY 10TH, 1968 HE WAS DEALT WITH BY THE NAMED RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 51(1) OF THE LABOUR RELATIONS ACT.

2. EIGHT MONTHS HAVE ELAPSED BETWEEN THE DATE OF THE ALLEGED OFFENCE AND THE FILING OF THE INSTANT COMPLAINT. MOREOVER,

THE ALLEGATIONS UPON WHICH THE COMPLAINANT RELIES PRIMA FACIE DO NOT DISCLOSE ANY VIOLATION OF SECTION 51(1) OF THE ACT. FURTHER, ANY REMEDY WHICH MAY BE AVAILABLE TO THE COMPLAINANT IS BY WAY OF AN ARBITRATION PROCEEDING AND NOT BY A COMPLAINT MADE TO THIS BOARD PURSUANT TO SECTION 65 OF THE ACT. FINALLY, IT WOULD APPEAR THAT THE COMPLAINANT HAS NAMED THE WRONG PARTY AS THE RESPONDENT IN HIS COMPLAINT.

3. ACCORDINGLY, THE BOARD, PURSUANT TO SECTION 46 OF ITS RULES OF PROCEDURE AND REGULATIONS, DISMISSES THE COMPLAINT.

INDEXED ENDORSEMENT - SECTION 39(3)

15431-68-M: WOOD, WIRE & METAL LATHERS' INTERNATIONAL UNION LOCAL 562, AND UNITED FORMING LIMITED (APPLICANTS).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: R. B. CUMINE AND G. SIMONE APPEARING FOR THE APPLICANT UNION AND J. P. SANDERSON APPEARING FOR THE APPLICANT COMPANY.

DECISION OF THE BOARD: JANUARY 6, 1969.

1. THE APPLICANTS HAVE APPLIED TO THE BOARD JOINTLY FOR RELIEF UNDER SECTION 66(9) AND 66(12) OR IN THE ALTERNATIVE UNDER SECTION 39(3) OF THE LABOUR RELATIONS ACT.

2. ON APRIL 13, 1966 THE APPLICANT UNITED FORMING LIMITED VOLUNTARILY RECOGNIZED LOCAL 506 OF THE INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA AS THE BARGAINING AGENT FOR ALL CONSTRUCTION LABOURERS IN ITS EMPLOY WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITED OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN.

3. ON THE SAME DAY THE APPLICANT UNITED FORMING LIMITED VOLUNTARILY RECOGNIZED LOCAL 721 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS AS THE BARGAINING AGENT FOR ALL REINFORCING RODMEN IN ITS EMPLOY WITHIN A TWENTY-FIVE

MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN.

4. ON MARCH 9, 1966 LOCAL 1190 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA WAS CERTIFIED AS THE BARGAINING AGENT FOR ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF UNITED FORMING LIMITED WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN.

5. ON NOVEMBER 4, 1968 THE APPLICANT UNION AND THE FORMING CONTRACTORS ASSOCIATION OF METROPOLITAN TORONTO SIGNED AN AGREEMENT IN WHICH THE ASSOCIATION RECOGNIZED THE UNION AS THE COLLECTIVE BARGAINING AGENT FOR ALL CONSTRUCTION EMPLOYEES OF THE COMPANIES [WHO SIGNED THE AGREEMENT] ENGAGED IN CONSTRUCTION WORK SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, OFFICE AND CLERICAL STAFF, SHOP AND YARD EMPLOYEES, ENGINEERING STAFF AND SECURITY GUARDS, AND OPERATING ENGINEERS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT, IN THE PROVINCE OF ONTARIO. UNITED FORMING LIMITED IS A MEMBER OF THE ASSOCIATION AND ITS SIGNATURE APPEARS ON THE DOCUMENT IN QUESTION.

6. IT IS ALLEGED THAT THE APPLICANT UNION WAS UNAWARE OF THE BARGAINING RIGHTS OF THE OTHER TRADE UNIONS AS SET OUT ABOVE AND THAT THE APPLICANT UNITED FORMING LIMITED INADVERTENTLY OVERLOOKED THE FACT THAT THERE WERE CERTAIN OUTSTANDING BARGAINING RIGHTS IN EXISTENCE. HENCE THE PRESENT APPLICATION.

7. IT IS CLEAR THAT SECTION 66(12) HAS NO APPLICATION TO THE PRESENT CIRCUMSTANCES BECAUSE SUBSECTION 12 DEALS ONLY WITH OVERLAPPING BARGAINING UNITS IN TWO OR MORE COLLECTIVE AGREEMENTS AND THERE IS ONLY ONE COLLECTIVE AGREEMENT INVOLVED IN THIS APPLICATION.

8. WE ARE ALSO OF THE OPINION THAT SUBSECTION 9 OF SECTION 66 DOES NOT APPLY. THAT SECTION READS AS FOLLOWS:

THE BOARD MAY IN ITS DISCRETION, OR AT ANY TIME FOLLOWING THE RELEASE OF ITS DIRECTION, ALTER THE BARGAINING UNIT DETERMINED IN A CERTIFICATE OR DEFINED IN A COLLECTIVE AGREEMENT AS IT DEEMS PROPER, AND THE CERTIFICATE OR AGREEMENT, AS THE CASE MAY BE, SHALL BE DEEMED TO HAVE BEEN ALTERED ACCORDINGLY.

IT IS ARGUED THAT THAT SUBSECTION GIVES THE BOARD UNFETTERED DISCRETION TO ALTER A BARGAINING UNIT DETERMINED IN A CERTIFICATE OR DEFINED IN A COLLECTIVE AGREEMENT AND, FURTHER, THAT SUCH POWER MAY BE EXERCISED AT ANY TIME. WE DO NOT READ THE SUBSECTION IN THAT FASHION. IN OUR VIEW IT IS PART AND PARCEL OF THE PRECEDING SUBSECTIONS AND IT SEEMS TO US THAT THEPOWER GIVEN IN SUBSECTION 9 MAY ONLY BE EXERCISED WHERE THERE IS A COMPLAINT BEFORE THE BOARD OF A JURISDICTIONAL DISPUTE. IN OTHER WORDS, WHERE THE BOARD IS CALLED UPON TO MAKE AN INTERIM ORDER OR DIRECTION IN CONNECTION WITH SUCH A COMPLAINT IT MAY MAKE ANY NECESSARY ALTERATIONS TO BARGAINING UNITS IN ORDER TO ENSURE COMPLIANCE WITH ITS INTERIM ORDER OR DIRECTION. THIS POWER IS ALSO GIVEN FOLLOWING THE RELEASE OF A DIRECTION. IN ANY EVENT, THE SUBSECTION WOULD NOT APPEAR TO APPLY TO A VOLUNTARY RECOGNITION DOCUMENT AS DISTINCT FROM A CERTIFICATE OF THE BOARD OR A COLLECTIVE AGREEMENT.

9. AFTER DUE CONSIDERATION WE HAVE COME TO THE CONCLUSION THAT THE APPLICANTS ARE ENTITLED TO RELIEF UNDER THE TERMS OF SECTION 39 OF THE LABOUR RELATIONS ACT. IF THE APPLICANTS WERE TO MUTUALLY AGREE TO AMEND THE RECOGNITION CLAUSE OF THE AGREEMENT DATED NOVEMBER 4, 1968 BY EXCLUDING THEREFROM REINFORCING RODMEN, CONSTRUCTION LABOURERS AND CARPENTERS AND CARPENTERS' APPRENTICES THE PARTIES WOULD AT ALL EVENTS, FOR THOSE CLASSIFICATIONS, BE REVISING A PROVISION OF THE AGREEMENT RELATING TO ITS TERM OF OPERATION WITHIN THE MEANING OF THOSE WORDS IN SUBSECTION 5 OF SECTION 39. IF THEY WERE SO TO ACT THEY WOULD BE BRINGING THAT AGREEMENT TO AN END IN SO FAR AS THOSE CLASSIFICATIONS ARE CONCERNED. THAT BEING THE CASE, WE ARE OF THE OPINION THAT IT IS WITHIN THE POWER OF THE BOARD UNDER SUBSECTION 3 OF SECTION 39 TO CONSENT TO SUCH A REVISION OR TERMINATION ON THE JOINT APPLICATION OF THE PARTIES.

10. AFTER CONSIDERING ALL THE CIRCUMSTANCES OF THIS CASE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD CONSENTS TO THE TERMINATION OF THE AGREEMENT BETWEEN THE APPLICANTS DATED NOVEMBER 4, 1968 IN SO FAR AS IT RELATES TO:

ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE APPLICANT UNITED FORMING LIMITED WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN;

ALL REINFORCING RODMEN IN THE EMPLOY OF THE APPLICANT UNITED FORMING LIMITED WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN; AND

ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE APPLICANT UNITED FORMING LIMITED WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN.

11. IT SHOULD BE NOTED THAT THE BOARD'S DECISION IN THIS MATTER IS RELATED SOLELY TO THE ISSUE BEFORE IT AND MUST NOT BE CONSTRUED AS MAKING ANY FINDINGS ON ANY COLLATERAL OR SUBSIDIARY MATTERS.

INDEXED ENDORSEMENT - SECTION 47A

15281-68-M: THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (U.A.W.- A.F.L.-C.I.O.) AND LOCAL 252 OF THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (U.A.W.- A.F.L.-C.I.O.) (APPLICANTS) v. CANADIAN TRAILMOBILE LIMITED; BRANTFORD TRAILER & BODY LIMITED; INTERNATIONAL MOLDERS AND ALLIED WORKERS' UNION THROUGH ITS LOCAL 28 (RESPONDENTS).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS P. J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG, G. PARKER, T. BRATTON FOR THE APPLICANTS, AND T. D. DELAMERE, A. G. PURDY, F. W. BAKER FOR CANADIAN TRAILMOBILE LIMITED, AND MARTIN LEVISON, E. WHITHAMES FOR INTERNATIONAL MOLDERS AND ALLIED WORKERS' UNION THROUGH ITS LOCAL 28.

DECISION OF THE BOARD: JANUARY 16, 1969.

1. THIS IS AN APPLICATION FOR RELIEF PURSUANT TO SECTION 47A OF THE LABOUR RELATIONS ACT. THE APPLICANTS (HEREINAFTER REFERRED TO AS UAW) WERE THE BARGAINING AGENTS FOR A UNIT OF EMPLOYEES OF CANADIAN TRAILMOBILE LIMITED, (HEREINAFTER REFERRED TO AS TRAILMOBILE) AT ITS SCARBOROUGH OPERATIONS AND ETOBICOKE SERVICE BRANCH. IT IS AGREED BY THE PARTIES THAT THIS APPLICATION DOES NOT CONCERN THE UAW'S REPRESENTATION WITH RESPECT TO THE SCARBOROUGH OPERATIONS. THE RESPONDENT, INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION THROUGH ITS LOCAL 28 (HEREINAFTER REFERRED TO AS MOLDERS) WAS THE BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF BRANTFORD TRAILER AND BODY LIMITED (HEREINAFTER REFERRED TO AS BRANTFORD) AT ITS SALES AND SERVICE BRANCH IN REXDALE. ON OR ABOUT AUGUST 9TH, 1968 TRAILMOBILE PURCHASED THE BUSINESS OF BRANTFORD. IT IS NOT DISPUTED THAT THIS TRANSACTION CONSTITUTED THE SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 47A OF THE ACT.

2. ON OR ABOUT AUGUST 28TH, 1968, MOLDERS GAVE NOTICE OF DESIRE TO BARGAIN PURSUANT TO THE PROVISIONS OF SECTION 47A, TO TRAILMOBILE. THOSE PARTIES MET AND BARGAINED WHICH RESULTED IN THE SIGNING OF A COLLECTIVE AGREEMENT BETWEEN THEM DATED SEPTEMBER 20TH, 1968 WHICH INCORPORATED THE TERMS (WITH CERTAIN EXCEPTIONS) OF A COLLECTIVE AGREEMENT BETWEEN BRANTFORD AND MOLDERS DATED NOVEMBER 25TH, 1967. AT THE TIME THE SALE BETWEEN TRAILMOBILE AND BRANTFORD BECAME EFFECTIVE THERE WERE 26 EMPLOYEES OF BRANTFORD IN THE BARGAINING UNIT AT REXDALE COVERED BY THE MOLDERS AGREEMENT.

3. ON JULY 12TH, 1968, THE EMPLOYEES OF TRAILMOBILE WERE NOTIFIED OF THE PENDING ACQUISITION OF BRANTFORD AND LATER THAT THE TRANSACTION WAS TO BE CONCLUDED ON AUGUST 9TH, 1968. ON AUGUST 1ST, BRANTFORD NOTIFIED ITS EMPLOYEES OF THE SALE AND OF THEIR TERMINATION OF EMPLOYMENT WITH BRANTFORD. ON SEPTEMBER 20TH, 1968 TRAILMOBILE NOTIFIED ITS EMPLOYEES OF A CONSOLIDATION OF ACTIVITIES AND THAT THE EVANS AVENUE SERVICE BRANCH (ETOBIKOKE BRANCH) WAS TO BE CLOSED AND THAT THE EMPLOYMENT OF THOSE PERSONS CONCERNED WOULD BE TERMINATED AS OF SEPTEMBER 27TH, 1968. IT WENT ON TO ADVISE THE EMPLOYEES THAT THEY COULD APPLY FOR EMPLOYMENT AT ITS REXDALE SERVICE BRANCH (FORMERLY OWNED BY BRANTFORD) AND THAT HIRING WOULD BE IN ACCORDANCE WITH THE REQUIREMENTS OF THAT BRANCH AND THE PERSON'S EMPLOYMENT RECORD. IN THIS NOTICE TRAILMOBILE ALSO SAID THAT THE REXDALE BRANCH WAS COVERED BY THE MOLDERS AGREEMENT AND THAT EMPLOYEES AT EVANS AVENUE WOULD BE ENGAGED AS PROBATIONARY EMPLOYEES AND NO ASSURANCES OF RETENTION OF SENIORITY COULD BE MADE. AT THAT TIME THERE WERE 27 EMPLOYEES OF TRAILMOBILE AT ETOBIKOKE. TWELVE OF THESE PERSONS WERE SUBSEQUENTLY HIRED AT THE REXDALE BRANCH AND DUE TO SOME LAY OFFS THE NUMBER OF EMPLOYEES OF TRAILMOBILE AT REXDALE IN THE BARGAINING UNIT AS OF THE DATE OF THE HEARING WAS 35. ALL EQUIPMENT, STOCK AND INVENTORY WAS TRANSFERRED FROM ETOBIKOKE TO REXDALE.

4. ON JULY 19TH, 1967, UAW AND TRAILMOBILE ENTERED INTO AN AGREEMENT CONFIRMING AN EARLIER AGREEMENT MADE BETWEEN THE PARTIES ON NOVEMBER 17TH, 1964 WITH RESPECT TO "TRANSFER OF OPERATIONS". THE RELEVANT PART FOR THE PURPOSES OF THIS APPLICATION IS AS FOLLOWS:

"THE COMPANY AGREES THAT, IF IT SHOULD TRANSFER ALL OR SUBSTANTIALLY ALL OF ITS OPERATIONS NOW CARRIED ON AT EITHER OR BOTH OF ITS SCARBOROUGH PLANT OR ITS ETOBIKOKE PLANT TO ANOTHER LOCATION OR LOCATIONS IN ONTARIO: -

- (A) THIS AGREEMENT WILL CONTINUE IN FULL FORCE AND EFFECT, SO AS TO COVER THE PLANT OR PLANTS AND THE EMPLOYEES AT THE NEW LOCATION OR LOCATIONS, AND
- (B) THE UNION SHALL BE THE BARGAINING AGENT FOR THE EMPLOYEES AT SUCH NEW LOCATION OR LOCATIONS, AND
- (C) ALL EMPLOYEES AT THE PLANT FROM WHICH SUCH OPERATIONS ARE TRANSFERRED ON THE SENIORITY LIST AT THE TIME OF SUCH TRANSFER WILL BE

OFFERED OPPORTUNITIES FOR EMPLOYMENT AT SUCH NEW LOCATION OR LOCATIONS WITH FULL SENIORITY AND OTHER RIGHTS AND BENEFITS PREVIOUSLY ACCRUED TO THEM BEFORE ANY NEW EMPLOYEES ARE HIRED AT THE NEW LOCATION OR LOCATIONS."

THE APPLICANTS SUBMIT THAT THE SITUATION OUTLINED ABOVE FALLS WITHIN THE PROVISIONS OF SECTION 47A(5) OF THE ACT; THERE HAS BEEN INTERMINGLING OF EMPLOYEES IN ONE BARGAINING UNIT AT REXDALE; THE UAW CLAIM TO REPRESENT SUCH PERSONS FLOWS FROM THE "TRANSFER OF OPERATIONS" AGREEMENT AND THE MOLDERS FROM THE PROVISIONS OF SECTION 47A (2) OF THE ACT, SO THAT A REPRESENTATION VOTE SHOULD BE CONDUCTED TO ESTABLISH THE BARGAINING RIGHTS.

5. IT WOULD APPEAR ON THE FACE OF THIS MATTER THAT ALL THE REQUIREMENTS SET OUT IN SECTION 47A(5) OF THE ACT HAVE BEEN MET. MOLDERS ARGUE, HOWEVER, THAT AS THERE WAS A SHUT DOWN OF THE ETOBICOKE OPERATIONS WITH A PREFERENTIAL HIRING ARRANGEMENT FOR THOSE EMPLOYEES, AT REXDALE THERE WAS NO INTERMINGLING OF EMPLOYEES AND NO TRANSFER. FURTHERMORE, MOLDERS SUBMIT THAT THE UAW IS ATTEMPTING TO ASSERT RIGHTS AT REXDALE WHICH IT NEVER PREVIOUSLY HAD SO THAT IN SPITE OF THE "TRANSFER OF OPERATIONS" AGREEMENT (WHICH MOLDERS STATE IS NOT VALID) THE UAW IS NOT A "PERSON CONCERNED" AND SHOULD NOT BE ENTITLED TO AVAIL ITSELF OF THE PROVISIONS OF SECTION 47A.

6. THE UAW WAS RECOGNIZED IN THE COLLECTIVE AGREEMENT BETWEEN IT AND TRAILMOBILE AS THE BARGAINING AGENT FOR CERTAIN EMPLOYEES AT SCARBOROUGH AND ETOBICOKE. CLEARLY, PRIOR TO AUGUST 9TH, 1968 UAW HAD NEVER BEEN CONCERNED WITH TRAILMOBILE EMPLOYEES AT REXDALE AS THERE WERE ONLY TWO SPECIFIC AREAS OF RECOGNITION IN THE COLLECTIVE AGREEMENT ABOVE REFERRED TO. U.A.W. HOWEVER, ASSERTS ITS CLAIM IN THIS MATTER THROUGH THE AGREEMENT DATED JULY 19TH, 1967 AND SUBMITS THAT THIS WAS THE TYPE OF SITUATION FORSEEN WHICH GAVE RISE TO THE AGREEMENT INITIALLY MADE IN 1964 AND CONFIRMED IN 1967. AT THE TIME THIS AGREEMENT WAS MADE, UAW REPRESENTED EMPLOYEES OF TRAILMOBILE AND WE FIND NOTHING IMPROPER IN THE PARTIES ENTERING INTO SUCH AN AGREEMENT TO TAKE EFFECT UPON CERTAIN EVENTS TAKING PLACE SO THAT THE RIGHTS OF EMPLOYEES THEN REPRESENTED BY THE UAW WOULD BE AFFORDED CERTAIN FUTURE PROTECTION. WE ARE HERE DEALING WITH THE EMPLOYEES INCLUDED IN ONE SEGMENT OF THE SCOPE OF THE UAW'S REPRESENTATION UNDER THE TERMS OF THE COLLECTIVE AGREEMENT. THIS IS READILY DISTINGUISHABLE FROM THE FACTS OF THE St. JOSEPH'S HOSPITAL Case, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1968, PAGE 558 WHERE THE INTERVENER IN THAT CASE NEVER HAD AS MEMBERS THE REGISTERED NURSING ASSISTANTS NOR DID IT HAVE SUCH MEMBERSHIP WHEN IT PURPORTED TO ENTER INTO A COLLECTIVE AGREEMENT WITH THE RESPONDENT INCLUDING THAT GROUP OF EMPLOYEES. IN THE INSTANT CASE THE

UAW IS ATTEMPTING TO ASSERT BARGAINING RIGHTS FOR A GROUP OF EMPLOYEES, A NUMBER OF WHOM IT HAD BEEN THE BARGAINING AGENT UNDER A COLLECTIVE AGREEMENT APPLICABLE TO ETOBICOKE. IT IS NOT THEN A QUESTION OF MEMBERSHIP OR WHETHER THE UAW HAD A RIGHTS TO MAKE THE "TRANSFER OF OPERATIONS" AGREEMENT BUT RATHER DO THE CIRCUMSTANCES HERE ALLOW THE APPLICATION OF THE TERMS OF THAT AGREEMENT AND IF SO WHAT RIGHTS OF THE UAW FLOW FROM IT.

7. HAD THERE BEEN NO TRANSACTION BETWEEN BRANTFORD AND TRAILMOBILE AND HAD TRAILMOBILE SIMPLY MOVED ITS SERVICE BRANCH FROM ETOBICOKE TO REXDALE (OR TO ANY OTHER LOCATION IN ONTARIO) IT WOULD HAVE AN OBLIGATION TO UAW TO CARRY OUT THE TERMS OF THE "TRANSFER OF OPERATIONS" AGREEMENT. THIS IS DISTINGUISHED FROM THE FACTS IN THE UNITED DAIRY CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY 1967 PAGE 911 WHERE THE APPLICANT DID NOT HAVE ANY BARGAINING RIGHTS WITH RESPECT TO THE EMPLOYEES OF MOUNTAINVIEW DAIRY AT WATERDOWN AND IN THAT SITUATION THE MAJORITY OF THE BOARD SAID AT PAGE 912:

" IT WOULD SEEM THAT THE BARGAINING RIGHTS OF RETAIL, WHOLESALE WOULD NOT CONTINUE EXCEPT BY AGREEMENT OF THE PARTIES. RETAIL, WHOLESALE COULD NOT BE IN A BETTER POSITION IN THIS CASE, WHERE OAKVILLE DAIRY, HAVING PURCHASED THE BUSINESS OF MOUNTAINVIEW MOVED ITS OPERATIONS TO WATERDOWN".

IN THE PRESENT CASE THERE IS AN AGREEMENT OF THE PARTIES TO CONTINUE THEIR RELATIONSHIP WHERE SUCH OPERATIONS ARE TRANSFERRED.

8. THERE IS NO DISPUTE THAT THE STOCK, INVENTORY AND EQUIPMENT WERE TRANSFERRED TO REXDALE. THE MOLDERS ARGUE THAT THE TERMINATION OF THE EMPLOYMENT OF THOSE PERSONS AT ETOBICOKE WITH THE OPPORTUNITY TO MAKE APPLICATION FOR A JOB AT REXDALE SUBJECT TO ITS REQUIREMENTS AMOUNTS NOT TO A TRANSFER OF OPERATIONS BUT TO A COMPLETE SHUTDOWN WHICH WOULD NOT IN ANY EVENT BRING INTO OPERATION THE TERMS OF THE "TRANSFER OF OPERATIONS" AGREEMENT. THE ACCEPTANCE OF THIS TYPE OF ARGUMENT WOULD SURELY GIVE RISE TO ABUSES OF THE LEGISLATION WHICH IN OUR VIEW IS DESIGNED AND IS INTENDED TO PROVIDE RELIEF IN SUCH SITUATIONS. ON THE FACTS IN THIS CASE WE ARE IMPELLED TO FIND THAT TRAILMOBILE TRANSFERRED ITS OPERATIONS FROM ETOBICOKE TO REXDALE SUBSEQUENT TO THE ACQUISITION BY IT OF BRANTFORD WHICH NO DOUBT WAS A CONSIDERATION FOR TRAILMOBILE IN ASSESSING THE EFFICIENCY OF ITS PRODUCTION AND SERVICES, IN ACQUIRING THE OTHER COMPANY. THE FACT THEN THAT EMPLOYMENT WAS TERMINATED AT THE ONE LOCATION WHICH CEASED ITS OPERATIONS DOES NOT LEAD TO THE CONCLUSION THAT THE OPERATIONS WERE NOT TRANSFERRED. WE FIND THAT THIS IS THE

SITUATION CONTEMPLATED BY TRAILMOBILE AND UAW WHEN THEY ENTERED INTO THE AGREEMENT UNDER WHICH THE OBLIGATION OF TRAILMOBILE IS CLEAR. SUCH AN OBLIGATION IS NOT LESSENED BY ITS SUBSEQUENT DEALINGS WITH THE MOLDERS. UAW'S INTEREST AT REXDALE ARISES FROM THIS AGREEMENT AND IN OUR VIEW CANNOT BE DEFEATED IN THE CIRCUMSTANCES OF THIS CASE BY A SHUTDOWN OF OPERATIONS IN ONE PLACE WHERE THE TANGIBLE ASSETS HAVE BEEN TRANSFERRED TO THE OTHER AND ALL THE EMPLOYEES AT ETOBICOKE GIVEN THE RIGHT OR OPPORTUNITY TO APPLY FOR A JOB AT THE NEW LOCATION. ONLY 12 OUT OF 26 DID IN FACT OBTAIN EMPLOYMENT AT REXDALE BUT THERE MAY BE MANY REASONS WHY THE OTHERS DID NOT APPLY OR WERE NOT HIRED BUT THIS IS ONLY ONE FACTOR IN ASSESSING THE WHOLE SITUATION. TRAILMOBILE MOVED ITS ETOBICOKE OPERATIONS TO REXDALE AFTER ACQUIRING THE LATTER BRANCH FROM BRANTFORD AND WE FIND THAT THIS ACTION COMES WITHIN THE AMBIT OF THE "TRANSFER OF OPERATIONS" AGREEMENT.

9. HAVING FOUND THAT UAW HAS AN INTEREST IN, OR COLOUR OF RIGHT TO, REPRESENT TRAILMOBILE EMPLOYEES AT REXDALE, IN ORDER TO COME WITHIN THE ACT, THERE MUST ALSO BE FOUND INTERMINGLING OF EMPLOYEES. EMPLOYEES OF BRANTFORD AT REXDALE WERE GIVEN NOTICE OF TERMINATION ON AUGUST 1ST. SUBSEQUENTLY, MOST OF THESE FORMER EMPLOYEES OF BRANTFORD BECAME EMPLOYEES OF TRAILMOBILE FOR WHOM THE MOLDERS ASSERTED ITS BARGAINING RIGHTS UNDER SECTION 47A(2) OF THE ACT. TRAILMOBILE EMPLOYEES AT ETOBICOKE WERE GIVEN NOTICE OF THEIR TERMINATION OF EMPLOYMENT EFFECTIVE SEPTEMBER 27TH, 1968 AND FOLLOWING SEPTEMBER 30TH SOME OF THESE PERSONS WERE HIRED AT REXDALE BUT IN FACT, AGAIN BY TRAILMOBILE, THE SAME EMPLOYER THEN WAS INVOLVED IN BOTH LOCATIONS WITH A NUMBER OF ITS EMPLOYEES AT ETOBICOKE AND THE REMAINDER BEING FORMER EMPLOYEES OF BRANTFORD WHO SOMETIME AFTER AUGUST 1ST BECAME EMPLOYEES OF TRAILMOBILE. THE MANNER IN WHICH THIS TRANSFER OF OPERATIONS WAS EFFECTED BY TRAILMOBILE DOES NOT PRECLUDE THE FACT THAT IN SUBSTANCE ITS EMPLOYEES IN ONE BUSINESS WERE INTERMINGLED WITH THOSE OF ANOTHER BUSINESS. WE THEREFORE FIND THAT THERE WAS AN INTERMINGLING OF EMPLOYEES WITHIN THE MEANING OF SECTION 47A(5) OF THE ACT.

10. THE BOARD DETERMINES THAT THE EMPLOYEES CONCERNED AT REXDALE CONSTITUTE ONE UNIT APPROPRIATE FOR COLLECTIVE BARGAINING. UNDER SECTION 47A(7) BEFORE DISPOSING OF ANY APPLICATION UNDER SECTION 47A THE BOARD MAY INTER ALIA HOLD SUCH REPRESENTATION VOTES AS IT DEEMS APPROPRIATE. IN THE INSTANT CASE ROUGHLY ONE THIRD OF THE EMPLOYEES IN THE NEW BARGAINING UNIT WERE FORMERLY REPRESENTED BY THE APPLICANTS AND THE BOARD FINDS THAT THIS IS A PROPER CASE TO CONDUCT A REPRESENTATION VOTE.

11. HAVING REGARD TO ALL THE CIRCUMSTANCES IN THIS MATTER THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE HELD OF ALL EMPLOYEES OF TRAILMOBILE AT ITS SALES AND SERVICE BRANCH IN REXDALE SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

12. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE UAW OR THE MOLDERS.

13. THE MATTER IS REFERRED TO THE REGISTRAR.

INDEXED ENDORSEMENT - SECTION 63

15445-68-M: GEORGE GEASON (COMPLAINANT) v. LOCAL 63 - C.U.P.E.
CARETAKERS (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: GEORGE GEASON FOR THE COMPLAINANT, F. L. TAYLOR, W. A. LEVER AND J. C. CULLEN FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 23, 1969.

1. THE COMPLAINANT, A MEMBER OF LOCAL UNION No. 63, CANADIAN UNION OF PUBLIC EMPLOYEES, HAS COMPLAINED THAT THE RESPONDENT, UPON HIS REQUEST, HAS FAILED TO FURNISH HIM WITH A COPY OF THE AUDITED FINANCIAL STATEMENT OF ITS AFFAIRS TO THE END OF ITS LAST FISCAL YEAR WHICH HAS BEEN CERTIFIED TO BE A TRUE COPY BY ITS TREASURER OR OTHER OFFICER RESPONSIBLE FOR THE HANDLING AND ADMINISTRATION OF ITS FUNDS, CONTRARY TO THE PROVISIONS OF SECTION 63 OF THE LABOUR RELATIONS ACT.

2. IT WOULD APPEAR FROM THE EVIDENCE THAT WHILE THE FINANCIAL STATEMENT ORIGINALLY GIVEN TO THE COMPLAINANT FOR THE YEAR ENDED SEPTEMBER 30TH, 1968 WAS SIGNED BY THE RESPONDENT'S SECRETARY-TREASURER AND ALSO BY THE TRUSTEES WHO AUDITED THE STATEMENT, NO CERTIFICATE APPEARED ON THE FACE OF THE DOCUMENT WHICH EVIDENCED THE TRUTH OF THE INFORMATION CONTAINED IN THE DOCUMENT. PRIOR TO THE HEARING, HOWEVER, THE RESPONDENT PROVIDED THE COMPLAINANT WITH A COPY OF THE "TRUSTEES REPORT" TO CANADIAN UNION OF PUBLIC EMPLOYEES WHICH WAS DULY CERTIFIED BY THE TRUSTEES WHO AUDITED THE REPORT.

3. THE BOARD ACCORDINGLY FINDS THAT THE FINANCIAL STATEMENTS PROVIDED BY THE RESPONDENT AS SET OUT ABOVE COMPLIED WITH THE REQUIREMENTS OF SECTION 63 OF THE ACT AND THIS COMPLAINT IS ACCORDINGLY TERMINATED.

4. IT IS TO BE NOTED, HOWEVER, THAT THE RESPONDENT HAS UNDERTAKEN TO SUPPLY ITS MEMBERS WITH CERTIFIED COPIES OF THE "TRUSTEES REPORT" IN THE FUTURE.

INDEXED ENDORSEMENT - SECTION 79(2)

15335-68-M: TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO
(APPLICANT) v. DOBBIE INDUSTRIES LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG FOR THE APPLICANT, JOHN P. SANDERSON AND GORDON McDONALD FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 23, 1969.

1. THE APPLICANT HAS APPLIED UNDER SECTION 79(2) OF THE LABOUR RELATIONS ACT AND HAS REQUESTED THAT THE BOARD DETERMINE WHETHER DORIS FLETCHER IS AN EMPLOYEE OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

2. HAVING REGARD TO ALL THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED DECEMBER 17TH, 1968, AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, THE BOARD FINDS THAT ALTHOUGH DORIS FLETCHER EXERCISES CERTAIN MINOR FUNCTIONS WHICH MAY BE CHARACTERIZED AS MANAGERIAL IN NATURE, SUCH FUNCTIONS ARE MERELY INCIDENTAL TO HER PRIMARY FUNCTIONS WHICH REQUIRE HER TO PERFORM WORK SIMILAR TO OTHER EMPLOYEES IN THE BARGAINING UNIT.

3. AGAIN, WHILE MRS. FLETCHER HAS ACCESS TO CERTAIN INFORMATION WHICH MAY BE CONFIDENTIAL, HER REGULAR DUTIES DO NOT REQUIRE HER TO USE CONFIDENTIAL INFORMATION RELATING TO LABOUR RELATIONS AND THEREFORE IT CANNOT BE SAID THAT SHE IS "EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS". IF MANAGEMENT CHOOSES TO OPENLY HOLD DISCUSSIONS WHERE THEY COULD BE READILY OVERHEARD, OR IF MANAGEMENT KEEPS DOCUMENTS IN A PLACE WHERE AN UNAUTHORIZED PERSON MAY INSPECT THEM AT WILL, SUCH ACTIONS BY MANAGEMENT CANNOT CAUSE THE PERSONS AFFECTION TO BE EMPLOYED IN A CONFIDENTIAL

CAPACITY. MRS. FLETCHER MUST REGULARLY USE THE CONFIDENTIAL INFORMATION IN THE PERFORMANCE OF HER WORK OR BE REQUIRED TO LISTEN TO CONFIDENTIAL DISCUSSIONS AS PART OF OR FOR THE PURPOSE OF PERFORMING HER DUTIES BEFORE IT CAN BE SAID THAT SHE IS "EMPLOYED IN A CONFIDENTIAL CAPACITY".

4. FOR THE REASONS SET OUT ABOVE AND HAVING REGARD TO THE CRITERIA ENUNCIATED BY THE BOARD IN THE FALCONBRIDGE NICKEL MINES LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1966, P. 379, THE BOARD FINDS THAT DORIS FLETCHER DOES NOT EXERCISE MANAGERIAL FUNCTIONS AND IS NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND IS THEREFORE AN EMPLOYEE OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

15342-68-M: LOCAL 397, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA (APPLICANT) v. GOODYEAR TIRE AND RUBBER COMPANY OF CANADA LIMITED, BOWMANVILLE, ONTARIO (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: L. A. MACLEAN FOR THE APPLICANT, ALLAN E. ROBINETTE AND GORDON SCHISSLER FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER R. W. TEAGLE: JANUARY 15, 1969.

1. THIS IS AN APPLICATION MADE PURSUANT TO THE PROVISIONS OF SECTION 79(2) OF THE LABOUR RELATIONS ACT WHEREIN THE APPLICANT HAS REQUESTED THE BOARD TO DETERMINE WHETHER RALPH POOLE IS AN EMPLOYEE UNDER THE ACT. THE APPLICANT IS THE BARGAINING AGENT FOR CERTAIN OFFICE EMPLOYEES OF THE RESPONDENT AT BOWMANVILLE.

2. THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED DECEMBER 17TH, 1968 DISCLOSED THAT RALPH POOLE HAS BEEN WORKING FOR THE RESPONDENT FOR THE PAST TWENTY-SIX YEARS AND HAS BEEN EMPLOYED AS THE SUPERVISOR OF ENGINEERING SINCE SEPTEMBER 1968. IN THIS POSITION HE SPENDS FIFTY PER CENT OF HIS TIME SUPERVISING 28 TO 32 MAINTENANCE EMPLOYEES WHO ARE EMPLOYED IN THE PRODUCTION BARGAINING UNIT. WHILE MR. POOLE HAS BEEN ADVISED THAT HE HAS THE AUTHORITY TO REPRIMAND EMPLOYEES, HE HAS NOT HAD OCCASION TO EXERCISE THIS AUTHORITY DURING THE RELATIVELY SHORT PERIOD WHICH HE HAS HELD HIS CURRENT POSITION. MR. POOLE HAS ATTENDED CERTAIN MEETINGS OF MANAGEMENT PERSONNEL

AT WHICH GRIEVANCES HAVE BEEN DISCUSSED. HE HAS AUTHORIZED SOME EMPLOYEES TO LEAVE WORK EARLY. MR. POOLE AUTHENTICATES THE TIME CARDS OF THE PRODUCTION EMPLOYEES UNDER HIS SUPERVISION. IN ADDITION TO HIS SUPERVISORY FUNCTIONS, IT APPEARS THAT MR. POOLE SPENDS TWENTY-FIVE PER CENT OF HIS TIME DOING THE SAME TYPE OF ENGINEERING WORK THAT HE PERFORMED AS A "PROJECT ENGINEER" WHICH POSITION IS EXCLUDED FROM BOTH THE OFFICE BARGAINING UNIT AND THE PRODUCTION BARGAINING UNIT. THE BALANCE OF MR. POOLE'S TIME IS SPENT ON CLERICAL WORK.

3. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES AND HAVING FURTHER REGARD FOR THE CRITERIA ENUNCIATED BY THE BOARD IN THE FALCONBRIDGE NICKEL MINES LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1966, p. 379, AND THE MANNESMANN TUBE COMPANY, LTD. CASE, O.L.R.B. MONTHLY REPORT, OCTOBER 1966, p. 528, WE FIND THAT RALPH POOLE EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. WHILE THE FUNCTIONS EXERCISED BY MR. POOLE MAY BE CHARACTERIZED AS "MINOR" MANAGERIAL FUNCTIONS, IT WOULD BE IMPROPER TO SAY THAT THEY ARE MERELY "INCIDENTAL". OF THE VARIOUS FUNCTIONS PERFORMED BY MR. POOLE, IT WOULD APPEAR THAT THE CLERICAL FUNCTIONS ARE INCIDENTAL TO HIS MAIN FUNCTIONS WHICH ARE OF A MANAGERIAL NATURE.

4. WE ACCORDINGLY FIND THAT RALPH POOLE IS NOT AN EMPLOYEE OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

DECISION OF BOARD MEMBER E. BOYER: JANUARY 15, 1969.

I DISSENT. HAVING CONSIDERED ALL THE EVIDENCE, I FIND THAT RALPH POOLE DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND IS AN EMPLOYEE OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

15486-68-M: BRAMPTON TRUCK DRIVERS ASSOCIATION, LOCAL NO. 54 AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. BRAMPTON TRANSPORT LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: IAN BINNIE, DONALD WHITE AND E. VANDERKLOET FOR THE APPLICANT, T. F. STORIE AND S. HARKEMA FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 23, 1969.

1. THIS IS AN APPLICATION PURSUANT TO THE PROVISIONS OF SECTION 79(2) OF THE LABOUR RELATIONS ACT, WHEREIN THE APPLICANT HAS REQUESTED THE BOARD TO DETERMINE WHETHER CERTAIN PERSONS ARE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE ACT. IT IS THE RESPONDENT'S POSITION THAT SUCH PERSONS ARE NOT EMPLOYEES BUT ARE "BROKERS" AND ARE ACCORDINGLY INDEPENDENT CONTRACTORS WITH WHOM THE RESPONDENT HAS ENTERED AGREEMENTS TO PERFORM CERTAIN TRUCKING SERVICES. IT WOULD ALSO APPEAR THAT SOME OF THE PERSONS WITH WHOM WE ARE HERE CONCERNED ARE IN SUPPORT OF THE APPLICANT'S POSITION IN THIS MATTER WHEREAS OTHERS ARE OPPOSED TO THE APPLICANT'S POSITION AND WISH TO BE TREATED AS INDEPENDENT CONTRACTORS.

2. IT IS APPARENT THAT THE PERSONS WITH RESPECT TO WHOM THE BOARD IS ASKED TO MAKE A DETERMINATION HAD AN INTEREST IN THESE PROCEEDINGS AND HAVE NOT HAD AN OPPORTUNITY TO INSTRUCT COUNSEL TO MAKE REPRESENTATIONS ON THEIR BEHALF, SINCE NO NOTICE OF THESE PROCEEDINGS WAS SERVED UPON THEM. HAVING REGARD TO THE REASONS FOR DECISION IN THE CENTRAL SUPERMARKETS CASE, O.L.R.B. MONTHLY REPORT, JUNE 1967, p. 299; BRADLEY ET AL. V. CORPORATION OF THE CITY OF OTTAWA ET AL. CASE, 67 CLLC ¶14,043, AND HOOGENDOORN V. GREENING METAL PRODUCTS AND SCREENING EQUIPMENT COMPANY ET AL. CASE, 67 CLLC ¶14,064, THE BOARD IS OF OPINION THAT SINCE THE PERSONS WITH RESPECT TO WHOM THIS APPLICATION IS MADE HAVE A DIRECT INTEREST IN THESE PROCEEDINGS AND HAVE NOT BEEN GIVEN AN OPPORTUNITY TO PARTICIPATE, THE BOARD DIRECTS THAT THE REGISTRAR OBTAIN FROM THE PARTIES THE ADDRESS OF EACH OF THE INDIVIDUALS WITH WHOM WE ARE HERE CONCERNED AND SERVE NOTICE OF THESE PROCEEDINGS BY REGISTERED MAIL ON SUCH PERSONS.

3. THE INDIVIDUAL PERSONS ARE INSTRUCTED TO NOTIFY THE REGISTRAR IN WRITING WITHIN 10 DAYS OF THE MAILING OF NOTICE OF THESE PROCEEDINGS OF THEIR DESIRE TO PARTICIPATE. IN THE ABSENCE OF SUCH NOTICE, THIS APPLICATION WILL CONTINUE WITHOUT FURTHER NOTICE TO ANY PERSON WHO HAS NOT INDICATED HIS DESIRE TO PARTICIPATE IN THIS MATTER.

4. MR. R. A. WOOLAND, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF:

B. BERGSMA
M. BILEK
B. BILLUPS
W. DALZIEL
W. FOSTER
D. McCARL
A. OOSTERHUIS
D. TESTER

D. LONG
W. REITSMA
D. HOOGENDOORN
P. TYRELL
P. VERHEUL
G. MUELLER
L. COPELAND
B. WALSH

W. VAN SLINGERLAND
G. VANDYK
R. BROWN

T. PYNE
W. BAUMAN
D. FOSTER

INDEXED ENDORSEMENTS - JURISDICTIONAL DISPUTES

14743(A)-68-JD: FRASER-BRACE ENGINEERING COMPANY, LIMITED
(COMPLAINANT) v. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF
AMERICA, LOCAL 2486, AND LABOURERS INTERNATIONAL UNION OF NORTH
AMERICA, LOCAL UNION 493 (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: A: J. CLARK, J. THOMSON, D. H. STEVENS
AND S. BELL FOR THE COMPLAINANT, L. C. ARNOLD, D. MANSON, P. E.
GUERTIN, W. STEFANOVITCH AND J. DUNLOP FOR UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486, R. KOSKIE, M. LEVINE,
U. ROSSINI, P. FOUCault AND L. CYR FOR LABOURERS INTERNATIONAL UNION
OF NORTH AMERICA, LOCAL UNION 493.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD
MEMBER E. BOYER: JANUARY 21, 1969.

1. THIS IS A COMPLAINT MADE UNDER SECTION 66 OF THE LABOUR
RELATIONS ACT.

2. THE COMPLAINANT IS REQUESTING THAT THE BOARD MAKE A
DIRECTION WITH RESPECT TO A DISPUTE THAT HAS ARISING BETWEEN THE
RESPONDENT UNIONS OVER AN ASSIGNMENT OF WORK THAT HAS BEEN MADE
BY THE COMPLAINANT ON THE FALCONBRIDGE NICKEL IRON ORE CONCENTRATOR
PROJECT AT FALCONBRIDGE.

3. THE COMPLAINANT IS THE GENERAL CONTRACTOR ON THE ABOVE
PROJECT. IN EARLY MAY OF 1968, THE COMPLAINANT COMMENCED THE
POURING OF CONCRETE WALLS. THERE IS NO DISPUTE BETWEEN THE RES-
PONDENT UNIONS THAT THE ERECTION OF THE WALL FORMS INTO WHICH THE
CONCRETE IS POURED IS WORK THAT FALLS UNDER THE JURISDICTION OF
THE CARPENTERS. THE JURISDICTIONAL OR WORK ASSIGNMENT DISPUTE
WITH WHICH THE BOARD IS HERE CONCERNED IS THE STRIPPING OF THE
WALL FORMS OF THE TYPE THAT IS BEING ERECTED ON THE FALCONBRIDGE
PROJECT. BOTH OF THE RESPONDENT UNIONS CLAIM THAT THIS WORK
FALLS UNDER THEIR RESPECTIVE JURISDICTIONS.

4. THE PROCESS OF ERECTION OF THE WALL FORM BEING USED ON THE FALCONBRIDGE PROJECT IS AS FOLLOWS. THE ACTUAL MATERIAL BETWEEN WHICH THE CONCRETE IS POURED IS 3/4 INCH THICK PLYWOOD IN SIZES OF 2' X 8' OR 4' X 8'. THE PIECES OF PLYWOOD ARE HELD IN PLACE BY 2" X 4" STUDS, WHICH ARE LENGTHS OF LUMBER NAILED VERTICALLY TO THE OUTSIDE SURFACE OF THE PLYWOOD. WALERS WHICH ARE ALSO 2" X 4" LENGTHS OF LUMBER, ARE THEN NAILED HORIZONTALLY TO THE STUDS. THE TIE RODS, WHICH PROTRUDE THROUGH HOLES IN THE PIECES OF PLYWOOD, BETWEEN WHICH THE CONCRETE IS POURED, ARE SECURED BY METAL WEDGES OR CLAMPS THAT ARE NAILED IN PLACE. STRONGBACKS, WHICH ARE 4" X 4" LENGTHS OF LUMBER, ARE NAILED IN VERTICAL POSITION TO THE WALERS. THE STRONGBACKS ARE FORTIFIED BY 4" X 4" LUMBER BRACES WHICH ARE NAILED TO THE STRONGBACKS AT AN ANGLE AND ANCHORED TO THE GROUND. THIS TYPE OF FORM IS MOST COMMONLY KNOWN AS A "BUILT-IN-PLACE" FORM.

5. THE STRIPPING OF THE WALL FORM IS ACCOMPLISHED IN THE REVERSE ORDER. USING A HAMMER AND PINCH BAR, THE BRACES, STRONGBACKS, WEDGES, WALERS, STUDS AND FINALLY THE PIECES OF PLYWOOD ARE REMOVED FROM THE CONCRETE WALL. ALL OF THIS MATERIAL IS THEN RE-USSED AGAIN IN THE ERECTION OF ANOTHER WALL FORM. IT IS THIS WORK OVER WHICH BOTH THE RESPONDENT LABOURERS AND CARPENTERS UNIONS ARE CLAIMING JURISDICTION. AFTER THE PLYWOOD HAS BEEN REMOVED FROM THE CONCRETE IT IS CLEANED, OILED AND MOVED TO THE NEXT POINT OF ERECTION. THERE IS NO DISPUTE THAT THE LATTER WORK FALLS UNDER THE JURISDICTION OF THE LABOURERS.

6. THE BACKGROUND LEADING UP TO THE MAKING OF THE INSTANT COMPLAINT IS RELEVANT IN THIS PROCEEDING. THE COMPLAINANT WAS THE GENERAL CONTRACTOR ON A CONSTRUCTION PROJECT FOR THE INTERNATIONAL NICKEL COMPANY OF CANADA AT ITS FROOD-STOBIE MINE, WHICH LIKE THE FALCONBRIDGE PROJECT IS IN THE SUDBURY AREA. THE SAME TYPE OF WALL FORM WHICH IS THE SUBJECT OF THE INSTANT DISPUTE WAS BEING USED ON THAT PROJECT. IN NOVEMBER OF 1966, THE COMPLAINANT ASSIGNED THE STRIPPING OF THE WALL FORMS TO MEMBERS OF THE RESPONDENT CARPENTERS UNION. THE CARPENTERS CONTINUED TO DO THIS WORK WITHOUT INTERRUPTION UNTIL JULY OF 1967 WHEN THE RESPONDENT LABOURERS LOCAL CHALLENGED THE ASSIGNMENT CLAIMING THE STRIPPING OF THE WALL FORMS FELL WITHIN THE LABOURERS' JURISDICTION. THE COMPLAINANT WAS UNABLE TO WORK OUT A SETTLEMENT THAT WAS MUTUALLY SATISFACTORY TO BOTH UNIONS AND MAINTAINED ITS ORIGINAL ASSIGNMENT. BY WAY OF PROTEST, AT THE BEGINNING OF AUGUST 1967, THE LABOURERS WALKED OFF THE JOB AND ENGAGED IN PICKETING WHICH RESULTED IN THE WHOLE PROJECT CLOSING DOWN WITHIN A FEW DAYS.

7. ON AUGUST 8TH, 1967, THE COMPLAINANT MADE A COMPLAINT UNDER SECTION 66 OF THE ACT REQUESTING THAT THE BOARD MAKE AN INTERIM ORDER AND DIRECTION ON THE WORK IN DISPUTE. FOLLOWING A CONSULTATION WITH THE PARTIES PURSUANT TO SUBSECTION (2) OF SECTION 66, THE BOARD MADE AN INTERIM ORDER UPHOLDING THE ORIGINAL ASSIGNMENT OF THE STRIPPING OF THE WALL FORMS TO THE CARPENTERS. IN SEPTEMBER OF 1967, THE WORK ON THE INCO PROJECT HAVING BEEN COMPLETED, UPON THE REQUEST OF THE COMPLAINANT, THE BOARD GRANTED LEAVE TO WITHDRAW THE COMPLAINT AND REVOKED THE INTERIM ORDER.

8. THE COMPLAINANT IS ALSO THE GENERAL CONTRACTOR FOR THE CONSTRUCTION OF A SCIENCE BUILDING AT LAURENTIAN UNIVERSITY WHICH IS IN THE SUDBURY AREA. THE SAME TYPE OF WALL FORM WITH WHICH WE ARE HERE CONCERNED IS BEING USED ON THAT PROJECT. IN LIGHT OF THE DISPUTE THAT HAD ARisen ON THE INCO PROJECT, THE COMPLAINANT MET WITH REPRESENTATIVES OF THE RESPONDENT UNIONS IN AN EFFORT TO FIND A SOLUTION TO THE PROBLEM. WHILE NEITHER UNION RELINQUISHED ITS JURISDICTIONAL CLAIM, BY AN AGREEMENT DATED MAY 1ST, 1968, BOTH UNIONS CONSENTED TO THE ASSIGNMENT OF THE WORK TO A COMPOSITE CREW OF CARPENTERS AND LABOURERS PENDING A REFERRAL OF THE DISPUTE TO THE NATIONAL JOINT BOARD FOR THE SETTLEMENT OF JURISDICTIONAL DISPUTES IN WASHINGTON, D.C. IT APPEARS THAT THE DISPUTE WAS REFERRED TO THE JOINT BOARD BUT THAT NO DECISION ON THE DISPUTE HAS BEEN HANDED DOWN BY THAT BODY.

9. WHEN THE COMPLAINANT SHORTLY THEREAFTER STARTED TO BUILD CONCRETE WALLS ON THE FALCONBRIDGE PROJECT, FOLLOWING THE PRECEDENT ESTABLISHED ON THE LAURENTIAN UNIVERSITY PROJECT, THE STRIPPING OF THE WALL FORMS WAS ASSIGNED TO A COMPOSITE CREW OF CARPENTERS AND LABOURERS. BY THE FIRST PART OF JUNE, HOWEVER, THE CARPENTERS UNION IN PARTICULAR WAS DISSATISFIED WITH THIS ARRANGEMENT. PART OF THIS DISSATISFACTION IT APPEARS GREW FROM THE FACT THAT THE PROJECT MANAGER HAD VERBALLY ASSIGNED THE STRIPPING OF THE WALL FORMS TO THE CARPENTERS AT A MEETING ATTENDED BY REPRESENTATIVES OF THE TWO UNIONS IN JANUARY OR FEBRUARY OF 1968. THE COMPLAINANT MET WITH REPRESENTATIVES OF THE UNIONS EARLY IN JUNE BUT WAS UNABLE TO WORK OUT AN ACCEPTABLE SETTLEMENT. IN MID-JUNE, IN COMPLIANCE WITH THE VERBAL ASSIGNMENT REFERRED TO ABOVE, THE COMPLAINANT REVOKED THE ASSIGNMENT OF THE WORK TO A COMPOSITE CREW AND RE-ASSIGNED ALL OF THE WORK OF STRIPPING THE WALL FORMS TO MEMBERS OF THE RESPONDENT CARPENTERS. AS SOON AS THE RESPONDENT LABOURERS UNION LEARNED OF THE NEW ASSIGNMENT, IT WITHDREW THE SERVICES OF ITS MEMBERS FROM THE FALCONBRIDGE PROJECT. ON JUNE 18TH, 1968, THE COMPLAINANT FILED THE INSTANT COMPLAINT. ON JUNE 24TH, 1968, THE BOARD MADE AN INTERIM ORDER UPHOLDING THE WORK ASSIGNMENT MADE BY THE COMPLAINANT TO THE CARPENTERS.

10. AT THE OUTSET OF THE HEARING ON THE MERITS OF THE DISPUTE ON JULY 16TH, 1968, COUNSEL FOR THE RESPONDENT LABOURERS UNION CHALLENGED THE PROPRIETY OF BOARD MEMBER EDMUND BOYER SITTING ON THE DIVISION OF THE BOARD ASSIGNED TO ENTERTAIN AND MAKE A DETERMINATION ON THE COMPLAINT. THE BASIS OF COUNSEL'S CHALLENGE WAS THAT AT ONE TIME BOARD MEMBER BOYER HAD BEEN AN OFFICER AND ACTIVE IN THE AFFAIRS OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA AND STILL RETAINED HIS MEMBERSHIP IN THE UNION. COUNSEL FOR THE COMPLAINANT EXPRESSED SIMILAR RESERVATIONS CONCERNING THE PROPRIETY OF BOARD MEMBER BOYER BEING ON THE DIVISION OF THE BOARD HEARING THE COMPLAINT.

11. ALTHOUGH BOARD MEMBER BOYER IS A MEMBER OF LOCAL 1940 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, HE HAS BEEN EXCUSED FROM ATTENDANCE AT MEETINGS OF LOCAL 1940, DOES NOT PARTICIPATE IN ANY OF ITS ACTIVITIES AND DOES NOT PAY ANY ASSESSMENTS, AS DISTINCT FROM DUES, TO THE LOCAL. MOREOVER, ON ASSUMING HIS DUTIES AS A MEMBER OF THE BOARD, MR. BOYER SWORE AN OATH THAT HE WOULD FAITHFULLY, TRULY AND IMPARTIALLY TO THE BEST OF HIS JUDGMENT, SKILL AND ABILITY, EXECUTE AND PERFORM THE OFFICE OF A BOARD MEMBER. MR. BOYER EXPRESS HIS CONFIDENCE THAT HE COULD DISCHARGE HIS OBLIGATIONS WITH RESPECT TO THE INSTANT COMPLAINT IN ACCORDANCE WITH HIS OATH OF OFFICE. BOARD MEMBER BOYER THEREFORE DID NOT DEEM IT NECESSARY TO DISQUALIFY HIMSELF FROM THE DIVISION OF THE BOARD ASSIGNED TO HEAR THE COMPLAINT. THE PARTIES WERE SO ADVISED OF THE POSITION OF BOARD MEMBER BOYER BY THE CHAIRMAN OF THE DIVISION OF THE BOARD ASSIGNED TO THE CASE.

12. COUNSEL FOR THE RESPONDENT CARPENTERS SUBMITTED THAT IN LIGHT OF THE POSITION TAKEN BY BOARD MEMBER BOYER WITH REGARD TO THE CHALLENGE MADE TO THE PROPRIETY OF HIS HEARING THE COMPLAINT, IT WAS INCUMBENT UPON COUNSEL FOR THE RESPONDENT LABOURERS EITHER IMMEDIATELY TO TAKE PROCEEDINGS BY WAY OF CERTIORARI TO HAVE BOARD MEMBER BOYER REMOVED FROM THE DIVISION OF THE BOARD HEARING THE CASE OR TO WITHDRAW HIS OBJECTIONS. COUNSEL FOR THE RESPONDENT LABOURERS ADVISED THE BOARD THAT HE WISHED TO HAVE HIS OBJECTION RECORDED BUT WANTED THE HEARING ON THE MERITS TO PROCEED BEFORE THE DIVISION OF THE BOARD AS CONSTITUTED. THE BOARD THEREUPON PROCEEDED WITH THE HEARING OF THE COMPLAINT.

13. THE HEARING ON THE MERITS OF THE DISPUTE LASTED A TOTAL OF FIFTEEN DAYS. THE BOARD ALSO VIEWED THE WORK IN DISPUTE AT THE FALCONBRIDGE PROJECT. IN TOTAL, THE BOARD HEARD THE TESTIMONY OF 116 WITNESSES AND 117 EXHIBITS WERE FILED IN EVIDENCE. WE WOULD MENTION THAT ALL THREE PARTIES TO THE PROCEEDINGS WERE ABLY REPRESENTED BY COUNSEL.

14. AS HAS BEEN STATED THE INSTANT DISPUTE CAME TO A HEAD AS A RESULT OF THE COMPLAINANT CHANGING THE ASSIGNMENT OF THE STRIPPING OF WALL FORMS ON THE FALCONBRIDGE PROJECT FROM A COMPOSITE CREW OF LABOURERS AND CARPENTERS TO A CREW COMPOSED SOLELY OF CARPENTERS. IN CHANGING THE ASSIGNMENT, THE COMPLAINANT BELIEVED IT WAS ACTING IN CONFORMITY WITH A DOCUMENT TITLED "MEMORANDUM ON CONCRETE FORMS" DATED OCTOBER 3RD, 1949. THE BODY OF THE DOCUMENT, WHICH BEARS THE SIGNATURES OF THEN SENIOR INTERNATIONAL OFFICERS OF THE RESPONDENT UNIONS, READS:

1. ON STRIPPING OF PANEL FORMS TO BE RE-USABLE AGAIN, THE RELEASING SHALL BE DONE BY MEMBERS OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA.
2. THE MOVING, CLEANING, OILING AND CARRYING TO THE NEXT POINT OF ERECTION, AND THE STRIPPING OF FORMS WHICH ARE NOT TO BE RE-USABLE, AND OF FORMS ON ALL FLAT ARCH WORK SHALL BE DONE BY MEMBERS OF THE INTERNATIONAL Hod CARRIERS, BUILDING AND COMMON LABORERS' UNION.
3. IT IS UNDERSTOOD THAT THERE SHALL BE NO STOPPAGE OF WORK BY REASON OF ANY DISPUTE CONCERNING THE WORK HEREIN COVERED. IN THE EVENT A DISPUTE ARISES THE MATTER SHALL BE REFERRED TO THE OFFICES OF THE TWO INTERNATIONAL UNIONS FOR POSSIBLE ADJUSTMENT. IN THE EVENT THAT THE MATTER IS THEN NOT ADJUSTED, THE DISPUTE SHALL BE REFERRED TO THE NATIONAL JOINT BOARD FOR THE SETTLEMENT OF JURISDICTIONAL DISPUTES.

15. MUCH VIVA VOCE TESTIMONY WAS ADDUCED AND DOCUMENTARY EVIDENCE WAS FILED, ALL RELATING TO THE INTERPRETATION OR MEANING OF PARAGRAPH 1 OF THE 1949 MEMORANDUM. NO ONE, HOWEVER, WHO WAS A SIGNATORY TO THE UNDERSTANDING WAS AVAILABLE TO BE CALLED AS A WITNESS TO TESTIFY AS TO THE INTENTION OF THE PARTIES AT THE TIME THE DOCUMENT WAS EXECUTED. AN OFFICIAL FROM THE LABOURERS INTERNATIONAL OFFICE AND AN OFFICIAL FROM THE CARPENTERS INTERNATIONAL OFFICE, BOTH OF WHOSE CURRENT POSITIONS RELATE TO JURISDICTIONAL DISPUTES, OFFERED THEIR VIEWS AS TO THE MEANING OF THE MEMORANDUM AND THE INTENTION OF THE TWO UNIONS AT THE TIME IT WAS SIGNED. THEY, TOGETHER WITH INTERNATIONAL REPRESENTATIVES, BUSINESS AGENTS AND JOURNEYMAN OF THE TWO UNIONS AS WELL AS CONTRACTORS, PROJECT SUPERINTENDENTS AND SUPERVISORS, ALL VENTURED OPINIONS AS TO THE MEANING OF THE WORDS "PANEL FORM", "RE-USUABLE FORM", "STRIPPING" AND "RELEASING".

16. IT WAS GENERALLY ACKNOWLEDGED THAT A 2' X 8' OR 4' X 8' PIECE OF PLYWOOD WITH A 2" X 4" BACKING OR FRAMING WHICH WAS PREFABRICATED EITHER IN A SHOP OR ON SITE AND WHICH WAS ERECTED AND STRIPPED AS A SINGLE UNIT WAS A "PANEL" FORM. ALMOST INVARIABLY, THE WITNESSES CALLED BY THE CARPENTERS TERMED THE 2' X 8' OR 4' X 8' PLYWOOD USED IN "BUILT-IN-PLACE" FORMS WITH WHICH WE ARE HERE CONCERNED AS "PLYWOOD PANELS". THEIR VIVA VOCE TESTIMONY IS SUPPORTED BY PROMOTIONAL LITERATURE ISSUED BY MANUFACTURERS OF PLYWOOD WHICH WAS FILED WITH THE BOARD. JUST AS INVARIABLY WITNESSES CALLED BY THE LABOURERS REFERRED TO THE PLYWOOD USED IN THE "BUILT-IN-PLACE" FORM AS "PLYWOOD SHEETING". THIS TESTIMONY IS SUPPORTED BY TECHNICAL CONSTRUCTION PUBLICATIONS WHICH WERE FILED WITH THE BOARD.

17. IT WAS GENERALLY AGREED THAT "STRIPPING" IN THE CASE OF "BUILT-IN-PLACE" FORMS MEANS THE ENTIRE DISMANTLING OF THE FORM AND THE REDUCTION OF ALL ITS COMPONENTS TO MATERIAL. IN THE CASE OF PREFABRICATED PLYWOOD PANEL FORMS WITH A FRAMED BACKING, IT WAS GENERALLY CONCEDED THAT THE "STRIPPING" MEANT THE ENTIRE DISMANTLING PROCESS EXCEPT THAT THE PANEL UNITS REMAINED IN THEIR PREFABRICATED OR PREFORMED STATE.

18. SOME WITNESSES CONSIDERED "RELEASING" TO BE SYNONYMOUS WITH "STRIPPING". OTHERS EXPRESSED THE VIEW THAT "RELEASING" MEANT ONLY THE BREAKING AWAY OF THE PLYWOOD FROM THE CONCRETE. STILL OTHERS SUGGESTED THAT "RELEASING" MEANT THE REMOVAL OF BOTH THE METAL WEDGES OR CLAMPS AND THE PLYWOOD. IT IS RELEVANT IN THIS DISPUTE TO POINT OUT THAT FORMING SYSTEMS OTHER THAN THOSE ALREADY DESCRIBED HAVE BEEN DEVELOPED SINCE THE SIGNING OF THE 1949 MEMORANDUM. IN SOME OF THESE SYSTEMS ONLY A RELATIVELY FEW STUDS AND WALTERS ARE REQUIRED, THE PLYWOOD ESSENTIALLY BEING SECURED IN PLACE BY METAL CLAMPS ATTACHED BY VARIOUS DEVICES TO THE TIE RODS. IN OTHER SYSTEMS, PARTICULARLY WHERE METAL FORMS ARE USED, CLAMPS ALONE, WHICH ARE ATTACHED TO THE TIE RODS, HOLD THE FORMS IN PLACE. IN THE NEWER SYSTEMS, WHEN THE CLAMPS ARE RELEASED, THE FORMS MORE OR LESS AUTOMATICALLY COME AWAY FROM THE CONCRETE.

19. THERE IS NO DISPUTE THAT THE MATERIALS USED TO ERECT "BUILT-IN-PLACE" FORMS, INCLUDING THE PLYWOOD, ARE RE-USSED AGAIN IN THE ERECTION OF SUCCESSIVE FORMS UNTIL SUCH TIME AS THE MATERIALS ARE SO DAMAGED OR "WORN OUT" THAT THEY HAVE TO BE SCRAPPED. SIMILARLY, IT WAS ACKNOWLEDGED THAT PREFABRICATED PLYWOOD PANELS ARE RE-USSED, IN THEIR PREFORMED STATE, TO BUILD OTHER FORMS UNTIL THEY ARE BROKEN, LOSE THEIR SHAPE, OR OTHERWISE ARE NO LONGER SERVICEABLE.

20. DESPITE THE VOLUME OF THE TESTIMONY, HOWEVER, LITTLE LIGHT WAS SHED ON THE EXTENT OF THE CARPENTERS JURISDICTION IN THE STRIPPING OF FORMS CONTEMPLATED BY THE OCTOBER 3RD, 1949 MEMORANDUM ON CONCRETE FORMS. THE TESTIMONY PRIMARILY SERVED TO UNDERScore THE OBTUSENESS OF THE LANGUAGE OF THE DOCUMENT ON ITS FACE. IT ALSO BROUGHT INTO FOCUS THE NATURE OF THE CONFLICTING AND IRRECONCILEABLE INTERPRETATIONS PLACED ON THIS "MEMORANDUM OF UNDERSTANDING" BY THE DISPUTING UNIONS. THE LABOURERS, TO A DEGREE, AND THE CARPENTERS, MORE HEAVILY, RELIED UPON THE MEMORANDUM AS A BASIS FOR THEIR RESPECTIVE JURISDICTIONAL CLAIMS. THE BOARD ACCORDINGLY HAS TRIED TO COMPREHEND ITS MEANING AND INTENT. TOWARDS THIS END WE HAVE SCRUTINIZED THE DECISIONS OF THE NATIONAL JOINT BOARD FOR THE SETTLEMENT OF JURISDICTIONAL DISPUTES ON THE STRIPPING OF FORMS. WE HAVE ALSO CONSIDERED THE AGREEMENTS ENTERED INTO BY THE TWO UNIONS RELATING TO THE 1949 MEMORANDUM.

21. THE FIRST DISPUTE BETWEEN THE LABOURERS AND CARPENTERS OVER THE STRIPPING OF FORMS OF WHICH THE BOARD HAS EVIDENCE AFTER THE SIGNING OF THE 1949 MEMORANDUM OCCURRED IN 1951 ON A PROJECT IN OKLAHOMA. THE CHAIRMAN OF THE JOINT BOARD AT THAT TIME WAS JOHN T. DUNLOP, WHO WITNESSED THE MEMORANDUM. THE DECISION OF THE JOINT BOARD ON THAT PARTICULAR JOB WAS THAT THE STRIPPING OF BEAM SIDE, BEAM BOTTOM, AND COLUMN SIDE PANEL FORMS AS THEY WERE USED ON THE PROJECT WAS GOVERNED BY THE OCTOBER 3RD, 1949 MEMORANDUM OF UNDERSTANDING AND SHOULD BE ASSIGNED TO THE CARPENTERS. FURTHER, THE STRIPPING OF PANEL FORMS WHICH WERE TO BE WRECKED WAS ALSO GOVERNED BY THE AGREEMENT OF OCTOBER 3RD, 1949 AND WAS THE WORK OF THE LABOURERS. THE SIGNIFICANCE OF THE DISPUTE FROM OUR POINT OF VIEW IS THAT IF THERE EVER WAS A GENUINE COMMON UNDERSTANDING AS TO THE DIVISION OF JURISDICTION ENVISAGED BY THE 1949 MEMORANDUM BETWEEN THE LABOURERS AND CARPENTERS THAT UNDERSTANDING CEASED TO EXIST IN LESS THAN TWO YEARS.

22. THERE IS EVIDENCE OF A DISPUTE BETWEEN THE LABOURERS AND CARPENTERS ON A PROJECT IN DENVER, COLORADO IN 1957. CECO STEEL PRODUCTS COMPANY WAS THE SUBCONTRACTOR. THE DECISION OF THE JOINT BOARD UNDER THE THEN CHAIRMAN R. J. MITCHELL ISSUED IN JULY OF THAT YEAR READS AS FOLLOWS: "IN ACCORDANCE WITH THE MEMORANDUM ON CONCRETE FORMS OF OCTOBER 3, 1949, THE RELEASING OF METAL PAN FORMS SHOULD BE ASSIGNED TO CARPENTERS; THE MOVING, CLEANING, OILING AND CARRYING TO THE NEXT POINT OF ERECTION SHOULD BE ASSIGNED TO LABOURERS". THIS DECISION APPEARS TO PLACE METAL FORMS IN THE CLASSIFICATION OF "PANEL FORMS". IT IS INTERESTING TO NOTE ALSO THAT IN THE 1951 DECISION, WHICH UNDOUBTEDLY RELATED TO SOME TYPE OF PLYWOOD FORM, THE JOINT BOARD ASSIGNED THE "STRIPPING" TO CARPENTERS. WITH REGARD TO THE

METAL FORMS, HOWEVER, THE ASSIGNMENT MADE BY THE JOINT BOARD TO THE CARPENTERS WAS THE "RELEASING" OF THE FORMS. IT MAY BE THAT ON THE LATER PROJECT USING METAL FORMS, ONLY CLAMPS HAD TO BE RELEASED TO DISENGAGE THE FORMS FROM THE CONCRETE. THIS MIGHT EXPLAIN THE DIFFERENCE IN NOMENCLATURE.

23. THERE WAS FILED WITH THE BOARD A COPY OF A MONTHLY PUBLICATION ISSUED BY THE CARPENTERS INTERNATIONAL UNION RECORDING DECISIONS OF THE JOINT BOARD INVOLVING CARPENTERS. THE PARTICULAR ISSUE FILED WAS FOR THE MONTH OF APRIL 1966. LISTED ARE EIGHT PROJECTS WHERE THERE WAS A DISPUTE BETWEEN THE CARPENTERS AND LABOURERS OVER THE STRIPPING OF FORMS. THE TYPES OF FORMS USED ON THE PROJECTS ARE NOT INDICATED. IN ALL INSTANCES, HOWEVER, THE DECISION OF THE BOARD, UNDER THE PRESENT CHAIRMAN, WILLIAM J. COUR, IS IDENTICAL. THE DECISION IN EACH CASE READS "THE WORK IN DISPUTE IS GOVERNED BY THE MEMORANDUM OF UNDERSTANDING DATED OCTOBER 3, 1949, BETWEEN THE DISPUTING INTERNATIONAL UNIONS AND SHALL BE SO ASSIGNED BY THE CONTRACTOR". THESE DECISIONS IN NO WAY ENLIGHTEN THIS BOARD AS TO THE ACTUAL ASSIGNMENT OF THE WORK IN DISPUTE.

24. IN 1967 A DISPUTE AROSE BETWEEN THE LABOURERS AND CARPENTERS OVER THE REMOVAL OF GATES PATENTED HARDWARE ON CONCRETE WALL FORMS ON A BELL TELEPHONE COMPANY PROJECT IN ST. LOUIS, MISSOURI. G. L. TARLTON CONTRACTING COMPANY WAS THE CONTRACTOR ON THE PROJECT. ACCORDING TO PROMOTIONAL LITERATURE PUBLISHED BY GATES & SONS, INC., UNDER THE GATES FORMING SYSTEM PLYWOOD SHEETING IS THE FORMING MATERIAL. ABOUT HALF THE USUAL NUMBER OF WALERS ARE NEEDED, AND DEPENDING ON THE TYPE OF CONSTRUCTION, STRONGBACKS AND STUDS MAY BE NEEDED. THE WALERS ARE HELD IN PLACE BY A BRACKET WHICH IS LOCKED TO A LOOP-END TIE. TARLTON, BY LETTER DATED AUGUST 23RD, 1967, ADVISED THE JOINT BOARD THAT THE ASSIGNMENT HAD BEEN MADE IN THE SAME MANNER AS THE COMPANY HAD DONE ON PREVIOUS JOBS. THAT IS, THE REMOVAL OF THE HARDWARE WAS ASSIGNED TO THE CARPENTERS AND THE REMOVAL OF THE WALERS, STRONGBACKS, STUDS AND PLYWOOD WAS ASSIGNED TO THE LABOURERS. THE PLYWOOD WAS SHEETING AND NOT PREFABRICATED PANELS. THE JOINT BOARD HELD THAT THERE WAS NO BASIS TO CHANGE THE CONTRACTOR'S ASSIGNMENT.

25. ANOTHER JURISDICTIONAL DISPUTE OVER THE STRIPPING OF FORMS OCCURRED ON THE HOLIDAY INN PROJECT AT MARQUETTE, MICHIGAN. ALLEN BROS. AND O'HARA INC. WERE THE CONTRACTORS. IN NOVEMBER OF 1967, THE JOINT BOARD ISSUED A DECISION STATING THAT THE WORK IN DISPUTE WAS GOVERNED BY THE MEMORANDUM OF UNDERSTANDING OF OCTOBER 3RD, 1949 AND WAS TO BE SO ASSIGNED BY THE CONTRACTOR.

ALLEN BROS. AND O'HARA INC., BY A TELEGRAM DATED NOVEMBER 24TH, 1967, ASKED THE JOINT BOARD FOR CLARIFICATION OF THE MEMORANDUM AS TO THE BOARD'S DEFINITION OF "PANEL FORMS" AND TO WHICH CRAFT THE STRIPPING OF THESE FORMS BELONGED. THE CONTRACTOR ADVISED THE JOINT BOARD THAT ITS METHOD OF FORMING ENTAILED THE USE OF 4' X 8' PLYWOOD SHEETS HELD IN PLACE WITH UNATTACHED 2" X 4" WALERS WHICH IN TURN WERE HELD IN PLACE BY WALL TIES. AT ITS MEETING ON NOVEMBER 28TH, 1967, THE JOINT BOARD CONSIDERED THE CONTRACTOR'S REQUEST AND CLARIFIED ITS DECISION BY HOLDING THAT THE FORMS DESCRIBED IN THE CONTRACTOR'S TELEGRAM ARE CONSIDERED TO BE PANEL FORMS AND SHOULD BE RELEASED BY CARPENTERS. WE WOULD COMMENT THAT THE FORM AS DESCRIBED ABOVE, WHILE USING PLYWOOD SHEETING IS A VERY MUCH SIMPLER DESIGN THAN THE "BUILT-IN-PLACE" TYPE OF FORM WITH WHICH WE ARE CONCERNED.

26. CECO STEEL PRODUCTS WAS INVOLVED IN ANOTHER DISPUTE OVER THE STRIPPING OF STEEL FORMS AT NEWPORT, RHODE ISLAND IN THE SPRING OF 1968. THE JOINT BOARD HELD THAT THERE WAS NO BASIS TO CHANGE THE CONTRACTOR'S ASSIGNMENT. WE DO NOT HAVE ANY EVIDENCE AS TO WHAT THE ASSIGNMENT WAS. WE NOTE, HOWEVER, THAT IN THE 1957 PROJECT AT DENVER, COLORADO THE JOINT BOARD ASSIGNED THE RELEASING OF METAL PAN FORMS TO THE CARPENTERS. IN HIS LETTER DATED MARCH 26TH, 1968, ADDRESSED TO THE PARTIES CONCERNED, CHAIRMAN COUR INCORPORATED THE FOLLOWING PARAGRAPH:

DURING ITS CONSIDERATION OF THIS JURISDICTIONAL DISPUTE, THE JOINT BOARD THOROUGHLY REVIEWED THE POSITION OF BOTH INTERNATIONAL UNIONS REGARDING THE APPLICATION OF AN AGREEMENT TO THE WORK IN DISPUTE. WHILE IT IS THE POLICY OF THE NATIONAL JOINT BOARD TO PROMOTE THE MAKING OF JURISDICTIONAL AGREEMENTS BETWEEN INTERNATIONAL UNIONS AND TO RECOGNIZE AGREEMENTS WHICH THE PARTIES THEMSELVES ACKNOWLEDGE AS SUCH, THE JOINT BOARD WILL NOT ENFORCE, OR USE AS A BASIS FOR ITS DECISION, A PURPORTED AGREEMENT ON WHICH THE PARTIES THEMSELVES APPARENTLY CANNOT AGREE AS TO THE CONTENTS OR COVERAGE. ACCORDINGLY, THE JOINT BOARD RECOMMENDS MOST STRONGLY TO THE GENERAL PRESIDENTS OF THE INTERNATIONAL UNIONS INVOLVED THAT THE DOCUMENT PRESENTED IN THIS JURISDICTIONAL DISPUTE BE REEXAMINED WITH A VIEW TOWARD MAKING IT A CLEAR AND COMPLETE AGREEMENT WHICH THEY WILL MUTUALLY RECOGNIZE AND WHICH MAY BE USED AS THE BASIS FOR SETTLEMENT OF DISPUTES OVER ITEMS CONTAINED THEREIN.

WHILE THE ABOVE QUOTED PARAGRAPH DOES NOT MAKE SPECIFIC REFERENCE TO THE OCTOBER 3RD, 1949 MEMORANDUM ON CONCRETE FORMS, IT IS REASONABLE TO INFER THAT THIS IS THE AGREEMENT TO WHICH THE JOINT BOARD WAS DIRECTING ITS ATTENTION. IT WOULD SEEM THAT THE JOINT BOARD RECOGNIZED THAT THE MEMORANDUM HAD BECOME MORE OF A SOURCE OF CONFLICT THAN A BASIS OF SETTLEMENT.

27. IN NOVEMBER OF 1968, THE JOINT BOARD WAS CONFRONTED WITH YET ANOTHER JURISDICTIONAL DISPUTE OVER THE STRIPPING OF FORMS. THE PROJECT WHERE THE DISPUTE OCCURRED WAS IN NORTH CAROLINA. CORRESPONDENCE FILED WITH THE BOARD INDICATES THAT THE FORMS INVOLVED IN THE DISPUTE WERE 4 X 8 PANELS OF TREATED PLYWOOD HELD IN PLACE WITH UNATTACHED WALERS AND SECURED WITH WALL TIES AND SNAP BRACKETS. (IT WAS ALLEGED THAT THE FORMS WERE IDENTICAL TO THOSE INVOLVED IN THE DISPUTE REGARDING THE HOLIDAY INN PROJECT AT MARQUETTE, MICHIGAN.) THE JOINT BOARD MADE THE FOLLOWING JOB DECISION FOR THE NORTH CAROLINA PROJECT: "THE RELEASING AND REMOVAL OF PLYWOOD WALL FORMS TO BE RE-USSED, INCLUDING THE REMOVAL OF HARDWARE, WALERS AND BRACING, SHALL BE ASSIGNED TO CARPENTERS. FROM THE POINT OF REMOVAL ALL ADDITIONAL HANDLING, INCLUDING CLEANING, OILING AND CARRYING TO THE NEXT POINT OF ERECTION, SHALL BE ASSIGNED TO LABOURERS." SIGNIFICANTLY, THE JOINT BOARD MADE NO REFERENCE TO THE OCTOBER 3RD, 1949 MEMORANDUM. THE DECISION IN THE ABOVE DISPUTE IS CONSISTENT WITH THE BOARD'S DECISION IN THE HOLIDAY INN DISPUTE. THE JOINT BOARD'S DECISIONS IN BOTH THESE DISPUTES, HOWEVER, APPEAR TO BE INCONSISTENT WITH THE BOARD'S DECISION IN THE TARLTON CASE IN ST. LOUIS, MISSOURI.

28. THE FORMING SYSTEM USED ON ALL THREE PROJECTS REFERRED TO ABOVE CAN BE DIFFERENTIATED FROM THE TYPE OF "BUILT-IN-PLACE" FORM WITH WHICH WE ARE HERE CONCERNED IN THAT THE FORMS BEING USED ON THE FALCONBRIDGE PROJECT WOULD APPEAR TO REQUIRE FAR MORE STUDS, WALERS, STRONGBACKS AND BRACES FOR SUPPORT THAN ARE REQUIRED ON THE AMERICAN PROJECTS. IT WOULD SEEM THAT THE HARDWARE, I.E., THE TYPE OF CLAMPS, USED ON THOSE PROJECTS AFFORD CONSIDERABLY MORE SUPPORT THAN THE WEDGES BEING USED ON THE FALCONBRIDGE PROJECT. MOREOVER, THE WALERS ARE UNATTACHED RATHER THAN BEING NAILED TO STUDS AS IN THE CASE OF THE FALCONBRIDGE PROJECT. THERE IS NO QUESTION THAT THE DISMANTLING OF THE FORMS ON THE LATTER PROJECT INVOLVES MORE WORK THAN WOULD BE THE CASE ON THE THREE AMERICAN PROJECTS WHERE MORE ADVANCED TECHNOLOGICAL SYSTEMS OF FORMING APPARENTLY WERE BEING USED.

29. IN SUMMARY, PARAGRAPH 1 OF THE OCTOBER 3, 1949 MEMORANDUM ON CONCRETE FORMS DOES NOT DRAW A CLEARLY DEFINED LINE OF DEMARCACTION AS TO THE JURISDICTION OF THE LABOURERS AND CARPENTERS UNIONS OVER THE STRIPPING OF FORMS. RATHER, THE DOCUMENT BEARS AMBIGUITIES ON ITS FACE WHICH HAVE BEEN THE

SOURCE OF EVER INCREASING JURISDICTIONAL DISCORD BETWEEN THE TWO UNIONS ALMOST SINCE ITS INCEPTION. MANY DISPUTES OVER THE YEARS HAVE BEEN REFERRED TO THE NATIONAL JOINT BOARD FOR THE SETTLEMENT OF JURISDICTIONAL DISPUTES. ACCORDING TO THE RECORD OF THE DECISIONS TO WHICH THIS BOARD WAS REFERRED, THE JOINT BOARD APPEARS GENERALLY SPEAKING TO HAVE HELD THAT THE STRIPPING OF FORMS IS GOVERNED BY THE MEMORANDUM OF UNDERSTANDING DATED OCTOBER 3, 1949, BETWEEN THE DISPUTING INTERNATIONAL UNIONS AND SHALL BE SO ASSIGNED BY THE CONTRACTOR. WE ASSUME THE DECISIONS OF THE JOINT BOARD WERE COMPLIED WITH. WE HAVE NO EVIDENCE, HOWEVER, AS TO THE ACTUAL ASSIGNMENT OF WORK THAT HAS BEEN MADE BY CONTRACTORS IN THE FACE OF SUCH DECISIONS. FURTHER, THERE IS NO RECORD BEFORE US OF THE JOINT BOARD MAKING ANY TYPE OF CLARIFICATION WITH RESPECT TO THE MEMORANDUM PRIOR TO THE HOLIDAY INN PROJECT DISPUTE IN 1967.

30. IT WOULD APPEAR FROM THE PASSAGE QUOTED ABOVE FROM THE JOINT BOARD'S DECISION OF MARCH 26TH, 1968, IN THE NEWPORT, RHODE ISLAND DISPUTE, THAT THE JOINT BOARD, IN EFFECT, DECLARED THE 1949 MEMORANDUM TO BE INOPERATIVE. THE ABSENCE OF ANY REFERENCE TO THE MEMORANDUM IN THE SUBSEQUENT NORTH CAROLINA PROJECT DISPUTE IN NOVEMBER OF 1968 INDICATES THAT THE JOINT BOARD HAS IN FACT DISPENSED WITH THIS DOCUMENT AS A BASIS OF SETTLEMENT. IN OTHER WORDS, THE NORTH CAROLINA PROJECT DISPUTE WOULD SEEM TO BE A NEW POINT OF DEPARTURE FOR THE JOINT BOARD IN DEALING WITH JURISDICTIONAL DISPUTES OVER THE STRIPPING OF FORMS.

31. IN THE NORTH CAROLINA DECISION, THE JOINT BOARD ASSIGNED THE RELEASING AND REMOVAL OF PLYWOOD WALL FORMS TO BE REUSED, INCLUDING THE REMOVAL OF HARDWARE, WALERS AND BRACING TO THE CARPENTERS. ACCORDING TO THE CORRESPONDENCE FILED WITH THE BOARD, HOWEVER, THE FORMS INVOLVED IN THE DISPUTE WERE 4'X 8' PANELS OF TREATED PLYWOOD HELD IN PLACE WITH UNATTACHED WALERS AND SECURED WITH WALL TIES AND SNAP BRACKET. THIS IS ONE OF THE NEWER TYPES OF FORMING SYSTEMS TO WHICH WE HAVE REFERRED, WHICH ONLY REQUIRES THE RELEASING OF CLAMPS OR, IN THIS CASE, A SNAP BRACKET TO DETACH THE PLYWOOD FROM THE CONCRETE. AS WE HAVE SUGGESTED ALREADY, THE WORK INVOLVED IN DISMANTLING THIS TYPE OF FORM IS LESS ARDUOUS THAN THE DISMANTLING OF THE TYPE OF "BUILT-IN-PLACE" FORMS IN USE ON THE FALCONBRIDGE PROJECT.

32. IT IS OUR CONCLUSION FROM AN ANALYSIS OF THE DECISIONS ON RECORD OF THE JOINT BOARD THAT THE OCTOBER 3, 1949 MEMORANDUM ON CONCRETE FORMS CAN ONLY BE OF LIMITED VALUE TO THIS BOARD IN MAKING ITS DIRECTION WITH RESPECT TO THE INSTANT COMPLAINT. THE DECISIONS IN THE MARQUETTE, MICHIGAN AND NORTH CAROLINA PROJECT

DISPUTES, HOWEVER, DO INDICATE THE DIRECTION IN WHICH THE JOINT BOARD APPEAR TO BE HEADING IN THE SETTLEMENT OF WORK ASSIGNMENT DISPUTES BETWEEN CARPENTERS AND LABOURERS IN THE DISMANTLING OF THE TYPE OF PLYWOOD WALL FORMS THAT WERE USED ON THOSE PROJECTS.

33. WHILE THERE IS EVIDENCE OF DISPUTES BETWEEN THE LABOURERS AND CARPENTERS OVER THE STRIPPING OF FORMS IN ONTARIO, DURING THE 1950'S AND EARLY 1960'S, IT APPEARS THAT DIFFICULTIES BETWEEN THE TWO UNIONS IN THIS AREA DID NOT REACH SERIOUS PROPORTIONS UNTIL 1963 AND 1964. BY 1965, THE CONFLICTS OVER THE STRIPPING OF FORMS BECAME SO INTENSE THAT OFFICIALS OF BOTH UNIONS WERE PROMPTED TO ENTER INTO A SERIES OF AGREEMENTS IN THAT YEAR DESIGNED TO SETTLE THE DISPUTE. BEFORE DEALING WITH THESE AGREEMENTS, HOWEVER, WE WOULD REFER TO A DISPUTE THAT CAME BEFORE THE ONTARIO JURISDICTIONAL DISPUTES COMMISSION IN THAT YEAR.

34. THE DISPUTE IN QUESTION AROSE OVER THE STRIPPING OF FORMS ON THE FIRST TOWER OF THE TORONTO-DOMINION PROJECT. PIGOTT CONSTRUCTION LIMITED, THE PARENT COMPANY OF THE COMPLAINANT IN THE INSTANT COMPLAINT, WAS THE GENERAL CONTRACTOR ON THE PROJECT. THE COMMISSION ISSUED A DIRECTION ON JULY 9TH, 1965 ASSIGNING THE WORK OF RELEASING PANEL FORMS TO BE RE-USSED AGAIN TO THE CARPENTERS. WHILE THE COMMISSION TOOK INTO ACCOUNT THE OCTOBER 3, 1949 MEMORANDUM, IT WOULD APPEAR THAT THE CONCLUSIVE DETERMINING FACTOR UPON WHICH IT RELIED WAS A JOB SITE AGREEMENT MADE BY REPRESENTATIVES OF THE TWO UNIONS. BY THAT AGREEMENT, THE LABOURERS' REPRESENTATIVES CONCEDED THAT THE RELEASING OF THE FORMS TO BE RE-USSED ON THE PROJECT FELL WITHIN THE JURISDICTION OF THE CARPENTERS. THE EVIDENCE BEFORE THE BOARD IS THAT ABOUT FIFTY PER CENT OF THE FORMS USED ON THE PROJECT WERE METAL FORMS. IT IS NOT CLEAR FROM THE EVIDENCE WHETHER ANY "BUILT-IN-PLACE" FORMS WERE USED.

35. RETURNING NOW TO THE AGREEMENTS MENTIONED EARLIER, IN OCTOBER OF 1965 A DISPUTE AROSE OVER THE STRIPPING OF FORMS ON A C.I.L. PROJECT IN SARNIA. A MEETING WAS HELD IN SARNIA ATTENDED BY SVEN JENSEN, A LABOURERS' INTERNATIONAL REPRESENTATIVE, AND WILLIAM STEFANOVITCH, A CARPENTERS' INTERNATIONAL REPRESENTATIVE. THE MEETING WAS ALSO ATTENDED BY THE LOCAL BUSINESS AGENTS OF THE TWO UNIONS IN THE AREA. THE OUTCOME OF THE MEETING WAS THAT JENSEN AND THE LOCAL BUSINESS AGENT OF THE CARPENTERS SIGNED A WRITTEN AGREEMENT DATED OCTOBER 7TH, 1965. (THE LOCAL BUSINESS AGENT OF THE LABOURERS REFUSED TO SIGN THE DOCUMENT.) THE BODY OF THE AGREEMENT READS:

THE FOLLOWING UNDERSTANDING WAS REACHED WITH RESPECT TO THE INTERNATIONAL AGREEMENT BETWEEN THE CARPENTERS AND THE LABOURERS, DATED OCT. 3/49, AND TITLED "MEMORANDUM ON CONCRETE FORMS."

1. ON FORMS THAT ARE TO BE RE-USSED, STRIPPING OF SAME IS TO BE PERFORMED BY MEMBERS OF THE CARPENTERS UNION.
2. ALL FORMS SO STRIPPED SHALL BE CLEANED, OILED, AND MOVED TO THE NEXT POINT OF ERECTION, IS TO BE PERFORMED BY MEMBERS OF THE LABOURERS UNION.
3. STRIPPING OF FLAT CEILINGS, IS TO BE PERFORMED BY MEMBERS OF THE LABOURERS UNION.
4. MATERIAL STRIPPED OFF FLAT CEILINGS, WHICH IS TO BE RE-USSED, SHALL IF REQUIRED, BE REPAIRED BY MEMBERS OF THE CARPENTERS UNION.

IT IS TO BE NOTED THAT THE AGREEMENT PURPORTS TO EXPRESS THE SIGNATORIES' UNDERSTANDING OF THE 1949 MEMORANDUM. WE WOULD POINT OUT THAT IN THE SARNIA AGREEMENT, THE WORD "PANEL" IS NOT INCLUDED WITH REFERENCE TO "FORMS" AS IN THE CASE IN THE EARLIER DOCUMENT. ALSO, THE SARNIA AGREEMENT DELETES THE WORD "RELEASING" WHICH APPEARS IN THE 1949 MEMORANDUM AND PROVIDES THAT THE "STRIPPING" IS TO BE PERFORMED BY CARPENTERS.

36. ABOUT THE SAME TIME A DISPUTE AROSE OVER THE STRIPPING OF FORMS ON THE WATERLOO UNIVERSITY BUILDING ON WHICH PROJECT ELLIS DON LTD. WAS THE GENERAL CONTRACTOR. THERE IS A CONFLICT IN THE EVIDENCE AS TO WHETHER THE TYPE OF FORM BEING USED WAS A "BUILT-IN-PLACE" OR "PANEL" FORM. A MEETING WAS HELD IN KITCHENER ON DECEMBER 9TH, 1965 ATTENDED BY STEFANOVITCH AND THE LOCAL BUSINESS AGENT OF THE CARPENTERS AND JENSEN AND THE LOCAL BUSINESS AGENT OF THE LABOURERS. THE LOCAL BUSINESS AGENTS SIGNED AN AGREEMENT AT THE MEETING WHICH IS IDENTICAL TO THAT SIGNED ON OCTOBER 7TH, 1965 IN SARNIA.

37. ON DECEMBER 22ND, 1965, ANDREW COOPER, AN INTERNATIONAL REPRESENTATIVE OF THE CARPENTERS, AND JENSEN MET IN TORONTO AND SIGNED AN AGREEMENT IDENTICAL TO THE SARNIA AND KITCHENER AGREEMENT. THIS AGREEMENT WAS NOT SIGNED IN THE CONTEXT OF ANY PARTICULAR DISPUTE AND WOULD APPEAR TO HAVE BEEN INTENDED FOR GENERAL APPLICATION.

38. WE WOULD REFER HERE ALSO TO TWO AGREEMENTS THAT WERE FILED WITH THE BOARD BETWEEN INDIVIDUAL COMPANIES WHO DO FORMING WORK IN THE TORONTO AREA AND THE TORONTO AND DISTRICT COUNCIL OF CARPENTERS. BOTH AGREEMENTS, WHICH ARE IDENTICAL, PROVIDE THAT ON THE STRIPPING OF PANEL FORMS TO BE RE-USSED, THE CARPENTERS

ARE TO REMOVE ALL BRACES, WEDGES, WALERS, STRONGBACKS, ETC., AND RELEASE THE PANEL FROM THE CONCRETE. ONE AGREEMENT WAS EXECUTED IN 1957. THE PRESENT GENERAL MANAGER OF THE COMPANY CONCERNED TESTIFIED THAT THE COMPANY ONLY EXECUTED THE AGREEMENT IN THE FACE OF A THREAT BY THE COUNCIL TO WITHDRAW THE SERVICES OF CARPENTERS FROM ALL OF THE COMPANY'S PROJECTS. HIS EVIDENCE IS THAT DESPITE THE AGREEMENT THE STRIPPING OF ALL TYPES OF FORMS HAS LARGELY BEEN DONE BY LABOURERS, IN PART, BECAUSE THE CARPENTERS ON THE JOBS HAVE DECLINED TO DO THIS TYPE OF WORK. THE OTHER AGREEMENT WAS EXECUTED IN 1962. THE PRESIDENT OF THAT COMPANY TESTIFIED THAT THE AGREEMENT ONLY RELATED TO PREFABRICATED PANEL FORMS. HIS EVIDENCE IS THAT THE COMPANY LARGELY USES "BUILT-IN-PLACE" FORMS AND THAT LABOURERS DO THE STRIPPING ALTHOUGH CARPENTERS SOMETIMES RELEASE THE WEDGES.

39. IN ADDITION TO THE ABOVE TWO AGREEMENTS, THERE WAS FILED WITH THE BOARD A MEMORANDUM WHICH WAS SENT BY THE LONDON AND DISTRICT CONSTRUCTION ASSOCIATION TO ITS GENERAL AND CONCRETE FORM CONTRACTOR MEMBERS. ALTHOUGH THE MEMORANDUM BEARS NO DATE, IT WOULD APPEAR THAT IT WAS RELEASED WITHIN THE PAST THREE YEARS. THE STATED PURPOSE OF THE MEMORANDUM WAS TO ASSIST THE CONTRACTORS IN ASSIGNING WORK IN THE STRIPPING OF FORMS IN LIGHT OF THE DIS-AGREEMENT BETWEEN THE LABOURERS AND CARPENTERS AS TO THEIR RESPECTIVE JURISDICTIONS. THE ASSOCIATION MEMORANDUM STATES THAT THE MEMORANDUM OF AGREEMENT DATED OCTOBER 3, 1949 FORMS THE BASIS IN THE LONDON AREA FOR THE "PRACTICAL APPLICATION OF RELEASING AND STRIPPING OF CONCRETE PANEL FORMS". THE ASSOCIATION MEMORANDUM THEN GOES ON TO SAY THAT ON PANEL FORMS THAT ARE TO BE RE-US ED, THE RELEASING OF ALL TIES, WALERS, STRONGBACKS, ETC., IS CARPENTERS WORK.

40. THE TWO AGREEMENTS BETWEEN INDIVIDUAL CONTRACTORS AND THE TORONTO AND DISTRICT COUNCIL OF CARPENTERS REFER TO THE STRIPPING OF "PANEL FORMS" TO BE RE-US ED AS DOES THE LONDON AND DISTRICT CONSTRUCTION ASSOCIATION MEMORANDUM, WHICH IS THE LANGUAGE OF THE OCTOBER 3, 1949 MEMORANDUM. THE LANGUAGE OF THE AGREEMENTS SIGNED IN THE FALL OF 1965 IN SARNIA, KITCHENER AND TORONTO, HOWEVER, ON THEIR FACE IS UNAMBIGUOUS AND SUPPORTS THE JURISDICTIONAL CLAIM OF THE CARPENTERS. THE PREFACE TO EACH OF THE AGREEMENTS, IT SHOULD BE NOTED, IN EFFECT, PROVIDES THAT THE CONTENTS OF THE AGREEMENTS REFLECT THE SIGNATORIES' UNDERSTANDING OF THE MEANING OF THE 1949 MEMORANDUM. YET IN THE NEWPORT, RHODE ISLAND PROJECT DISPUTE THE JOINT BOARD, IN THE RESULT, STATED THAT IT WOULD NOT USE

THE 1949 MEMORANDUM AS A BASIS OF SETTLEMENT IN VIEW OF THE FACT THAT THE TWO INTERNATIONAL UNIONS THEMSELVES COULD NOT AGREE AS TO ITS CONTENTS OR COVERAGE.

41. THE SARNIA, KITCHENER AND TORONTO AGREEMENTS BETWEEN THE LABOURERS AND CARPENTERS MUST BE VIEWED AGAINST THE BACKGROUND OF THE EVIDENCE AS TO THE ACTUAL PRACTICES ADHERED TO ACROSS THE PROVINCE AND, IN PARTICULAR, THE SPECIFIED AREAS. VOLUMINOUS EVIDENCE WAS ADDUCED AS TO AREA PAST PRACTICE IN THE STRIPPING OF WALL FORMS. WE DO NOT PROPOSE TO DEAL IN ANY DETAIL IN THIS DECISION WITH THAT EVIDENCE. INDEED, THE EVIDENCE IS SO DIVERGENT AS TO THE ASSIGNMENT THAT HAS BEEN MADE BY CONTRACTORS AS BETWEEN LABOURERS AND CARPENTERS WITH REGARD TO THE STRIPPING OF WALL FORMS THAT IT ALMOST DEFIES A MEANINGFUL ANALYSIS. MOREOVER, THERE WERE DIRECT CONFLICTS IN THE EVIDENCE AS TO THE WORK ASSIGNMENTS THAT HAD BEEN MADE ON MANY PROJECTS. THE DIFFICULTIES WITH WHICH THE BOARD WAS CONFRONTED IN ASSESSING CREDIBILITY AND DETERMINING THE WEIGHT TO BE GIVEN TO SUCH CONFLICTING EVIDENCE HARDLY NEED ELABORATION. ALTHOUGH A LARGE NUMBER OF WITNESSES TESTIFIED ON THIS SUBJECT, OUT OF THEIR TOTAL EVIDENCE THERE EMERGED NO CLEAR PATTERN OF PAST PRACTICE IN MOST AREAS OF THE PROVINCE. RATHER WHAT WAS REVEALED WAS LARGELY A CONFUSING PICTURE OF WIDELY VARIED AND MIXED PRACTICES, WHICH, ON THE SURFACE AT LEAST, ARE A CHALLENGE TO ANY SORT OF LOGIC. THE ASSIGNMENTS THAT HAVE BEEN MADE IN THE PAST OFTEN APPEAR TO REFLECT NOTHING MORE THAN THE ORGANIZATIONAL STRENGTH OF THE TWO DISPUTING UNIONS IN A PARTICULAR AREA AT A PARTICULAR TIME.

42. ALTHOUGH NO REAL PATTERN OF PAST PRACTICE IS APPARENT, ON A CLOSER EXAMINATION OF THE EVIDENCE A FEW GENERAL TRENDS ARE DISCERNIBLE. EVEN THESE FEW TRENDS, HOWEVER, ARE BLURRED BY A MULTIPLICITY OF EXCEPTIONS. OVER THE PAST DECADE, THE "BUILT-IN-PLACE" TYPE OF WALL FORM WITH WHICH WE ARE HERE CONCERNED SEEM TO HAVE BEEN FAVOURED OVER PREFABRICATED FORMS IN AREAS OF THE PROVINCE WHERE THE TERRAIN IS UNEVEN AND ROCKY. THIS IS THE CASE IN THE SUDBURY AREA AND NORTHERN ONTARIO GENERALLY. PREFABRICATED FORMS, WHETHER MADE OF PLYWOOD OR METAL, WOULD APPEAR TO HAVE HAD A GREATER POPULARITY IN PARTS OF THE PROVINCE WHERE THE TERRAIN IS RELATIVELY FLAT, SUCH AS WESTERN ONTARIO. THESE LATTER TYPES OF FORMS FREQUENTLY HAVE BEEN USED ALSO IN BUILT-UP URBAN CENTRES. WHILE CARPENTERS AND LABOURERS HAVE DISMANTLED BOTH "BUILT-IN-PLACE" AND PREFABRICATED WALL FORMS IN MOST AREAS OF THE PROVINCE, THE ASSIGNMENT OF THE STRIPPING OF "BUILT-IN-PLACE" FORMS WOULD SEEM TO HAVE BEEN MADE WITH CONSIDERABLY MORE REGULARITY TO LABOURERS THAN TO CARPENTERS. WE WOULD MENTION, HOWEVER, THAT

IN THEIR COLLECTIVE AGREEMENTS WITH THE CARPENTERS, THE WINDSOR CONSTRUCTION ASSOCIATION AND THE LAKEHEAD BUILDERS EXCHANGE RECOGNIZE THE JURISDICTIONAL CLAIM OF THE CARPENTERS OVER THE DISMANTLING OF ALL MATERIALS WHICH INCLUDE WOOD. IN THE CASE OF PREFABRICATED WALL FORMS, THERE APPEARS TO HAVE BEEN MORE OF A BALANCE IN THE ASSIGNMENT OF THE STRIPPING AS BETWEEN LABOURERS AND CARPENTERS.

43. WITH REFERENCE TO THE SUDBURY AREA, IN PARTICULAR, THE LOCALLY BASED CONTRACTORS MOST OFTEN SEEM TO HAVE ASSIGNED THE STRIPPING OF WALL FORMS TO LABOURERS. OTHER CONTRACTORS WHO HAVE WORKED IN THE AREA ALSO APPEAR TO HAVE MORE REGULARLY ASSIGNED THE STRIPPING OF WALL FORMS TO LABOURERS THAN CARPENTERS. AS HAS ALREADY BEEN INDICATED, "BUILT-IN-PLACE" WALL FORMS ARE IN MORE COMMON USAGE IN THIS AREA. WITH REGARD TO THE COMPLAINANT FRASER-BRACE ENGINEERING COMPANY, LIMITED, AS HAS BEEN MENTIONED EARLIER, IT HAS ASSIGNED THE STRIPPING OF "BUILT-IN PLACE" WALL FORMS ON ITS LAST THREE PROJECTS, I.E., THE INCO PROJECT AT FROOD-STOBIE MINE, LAURENTIAN UNIVERSITY AND, OF COURSE, THE PRESENT PROJECT AT FALCONBRIDGE, TO EITHER CARPENTERS OR COMPOSITE CREWS OF CARPENTERS AND LABOURERS. THE COMPLAINANT ALSO DID A CONSIDERABLE AMOUNT OF FORM WORK ON CONSTRUCTION PROJECTS FOR THE INTERNATIONAL NICKEL COMPANY LIMITED IN THE SUDBURY AREA BETWEEN 1948 AND 1956. ALTHOUGH THERE ARE CONFLICTS IN THE TESTIMONY, THE MOST RELIABLE EVIDENCE INDICATES THAT THE COMPLAINANT LARGELY EMPLOYED LABOURERS FOR THE STRIPPING OF WALL FORMS. IT APPEARS FROM THE EVIDENCE THAT, ALTHOUGH SOME PREFABRICATED FORMS WERE USED, MORE OFTEN THE COMPLAINANT USED "BUILT-IN-PLACE" FORMS ON THE INCO PROJECTS.

44. GENERALLY THEN, PAST AREA PRACTICE TENDS TO DIMINISH THE WEIGHT THAT CAN BE ATTACHED TO THE THREE ONTARIO AGREEMENTS. ALSO DETRACTING FROM THEM IS THE FACT THAT NO CONTRACTORS ARE PARTIES TO THE AGREEMENTS. WE NOTE THAT THE PLAN FOR THE NATIONAL JOINT BOARD FOR THE SETTLEMENT OF JURISDICTIONAL DISPUTES AS OUTLINED IN THE GREEN BOOK SPECIFICALLY PROVIDES FOR THE REPRESENTATION OF EMPLOYER CONTRACTORS ON THE BOARD AND FOR THEIR PARTICIPATION IN THE DECISION MAKING PROCESS. BY THE SAME TOKEN, ONE WOULD EXPECT THAT THE VIEWS AND PREFERENCES OF CONTRACTORS IN THE AREAS, AS WELL AS THOSE OF THE DISPUTING UNIONS, WOULD BE TAKEN INTO ACCOUNT IN SETTLING JURISDICTIONAL PROBLEMS. ACCORDING TO THE EVIDENCE, RELATIVELY FEW CONTRACTORS IN ONTARIO APPEAR TO HAVE HEARD OF THE 1949 MEMORANDUM AND AN EVEN LESSER NUMBER SEEM TO HAVE BEEN AWARE OF THE EXISTENCE OF THE ONTARIO AGREEMENTS. THE SARNIA, KITCHENER AND TORONTO AGREEMENTS NONETHELESS AFFORD CONSIDERABLE SUPPORT TO THE POSITION OF THE CARPENTERS. ON THE OTHER HAND, THE EVIDENCE CONCERNING AREA

PRACTICE WOULD SEEM TO FAVOUR THE LABOURERS' JURISDICTIONAL CLAIM OVER THE STRIPPING OF "BUILT-IN-PLACE" WALL FORMS.

45. WE COME LAST TO A CONSIDERATION OF SKILL, EFFICIENCY AND ECONOMY. IT IS CLEAR FROM THE EVIDENCE THAT NO CARPENTER TRADE SKILLS ARE REQUIRED TO DISMANTLE "BUILT-IN-PLACE" WALL FORMS. A CERTAIN AMOUNT OF CARE IS REQUIRED IN REMOVING THE PLYWOOD SHEETING FROM THE CONCRETE SO AS NOT TO MAR THE CONCRETE ITSELF OR DAMAGE THE SHEETING WHICH IS TO BE RE-US ED. ANY SKILLS THAT ARE NEEDED CAN AS EASILY BE ACQUIRED BY LABOURERS AS CARPENTERS FROM EXPERIENCE ON THE JOB. A FEW CONTRACTORS, HOWEVER, EXPRESSED A PREFERENCE FOR CARPENTERS IN SOME CIRCUMSTANCES TO REMOVE THE PLYWOOD FROM THE CONCRETE. WITH REGARD TO EFFICIENCY, TAKING INTO ACCOUNT TODAY'S METHODS OF MIXING CONCRETE AND POURING WALLS, THE EVIDENCE SUGGESTS THAT A CONTRACTOR'S WORK FORCE IS BETTER UTILIZED AND MORE PRODUCTIVELY EMPLOYED WHEN CARPENTERS ERECT "BUILT-IN-PLACE" WALL FORMS AND LABOURERS STRIP THEM. THIS IN TURN, ASIDE FROM COST SAVING BECAUSE OF THE WAGE DIFFERENTIAL BETWEEN CARPENTERS AND LABOURERS, MAKES FOR A MORE ECONOMICAL OPERATION. BASED ON THE ABOVE CRITERIA, THE LABOURERS HAVE A SUPERIOR CLAIM TO JURISDICTION OVER THE WORK IN DISPUTE.

46. IN SUMMARY, TAKING INTO ACCOUNT THE ONTARIO AGREEMENTS AND THE JURISDICTIONAL DIVISION OF WORK INDICATED BY THE MOST RECENT DECISIONS OF THE NATIONAL JOINT BOARD THAT WERE BROUGHT TO OUR ATTENTION, WE FIND THAT CARPENTERS HAVE ESTABLISHED A VIABLE JURISDICTIONAL CLAIM TO THE WORK OF RELEASING THE HARDWARE AND REMOVING THE PLYWOOD SHEETING IN THE DISMANTLING OF WALL FORMS. ON THE OTHER HAND, THE EVIDENCE RELATING TO PAST PRACTICE AND THE FACTORS OF SKILL, EFFICIENCY AND ECONOMY HAVE SATISFIED US THAT THE LABOURERS HAVE ESTABLISHED AN EQUALY VIABLE JURISDICTIONAL CLAIM TO THE STRIPPING OF THE REMAINING MATERIALS USED IN THE ERECTION OF WALL FORMS, THAT IS, THE BRACES, STRONGBACKS, WALERS AND STUDS.

47. BEFORE MAKING OUR DIRECTION IN THIS DISPUTE, WE WOULD COMMENT ON THE QUESTION OF THE WEIGHT TO BE GIVEN TO THE TESTIMONY OF THE MANY WITNESSES. COUNSEL FOR THE LABOURERS SUBMITTED THAT THE TESTIMONY GIVEN BY PERSONNEL OF CONTRACTING FIRMS WHOM HE CALLED AS WITNESSES SHOULD BE PREFERRED OVER THAT OF CARPENTERS' BUSINESS AGENTS AND REPRESENTATIVES CALLED BY COUNSEL FOR THE CARPENTERS BECAUSE OF THEIR LACK OF IMMEDIATE INTEREST IN THE OUTCOME OF THE COMPLAINT. COUNSEL FOR THE CARPENTERS, ON THE OTHER HAND, ARGUED THAT THE EVIDENCE OF THE CONTRACTORS AND THEIR REPRESENTATIVES DEMONSTRATED A CLEAR PREFERENCE ON THEIR PART TO USE LABOURERS RATHER THAN CARPENTERS ON THE STRIPPING OF FORMS. COUNSEL SUBMITTED THAT THIS FACT TOTALLY DESTROYS THE

ALLEGED OBJECTIVITY OF THESE WITNESSES ASSERTED BY COUNSEL FOR THE LABOURERS. IN OUR VIEW, NO SWEEPING GENERALIZATIONS AS TO THE QUALITY OF THE EVIDENCE CALLED BY THE THREE PARTIES TO THE PROCEEDINGS ARE JUSTIFIED. THE WEIGHT TO BE GIVEN TO THE EVIDENCE OF THE WITNESSES OBVIOUSLY ONLY CAN BE ASSESSED ON AN INDIVIDUAL BASIS.

48. COUNSEL FOR ALL PARTIES ASKED THE BOARD TO GIVE FURTHER GUIDANCE AS TO THE FACTORS WHICH IT CONSIDERS RELEVANT IN MAKING ITS DETERMINATIONS IN JURISDICTIONAL DISPUTES. MOST OF THE FACTORS WHICH THE BOARD TAKES INTO ACCOUNT ARE SET OUT IN THE CANADA MILL-WRIGHTS LIMITED CASE, O.L.R.B. MONTHLY REPORT, MAY 1967, p. 195. THE RELATIVE IMPORTANCE OF THESE VARIOUS FACTORS HAS BEEN INDICATED IN SUBSEQUENT DECISIONS. THE CONTENT OF THE INSTANT DECISION WE HOPE AFFORDS SOME GUIDANCE TO THE PARTIES. WE WOULD STATE, HOWEVER, THAT UNLESS THERE ARE EXTENUATING CIRCUMSTANCES, THE RELEVANT AREA PRACTICE IS THE AREA WHERE THE DISPUTE AROSE.

49. WE DO HAVE A FEW REMARKS TO MAKE ABOUT THE VAST AMOUNT OF EVIDENCE ADDUCED RELATING BOTH TO THE AGREEMENTS ENTERED INTO BY THE LABOURERS AND CARPENTERS AND PAST AREA PRACTICE. IT WAS ALMOST OVERWHELMING. THIS STATEMENT IS NOT TO BE INTERPRETED AS MEANING THAT THE BOARD HAS ANY OBJECTION PER SE TO LENGTHY EVIDENCE. WE ARE MERELY CAUTIONING AGAINST THE CALLING OF SUPERFLUOUS EVIDENCE. SUCH EVIDENCE MAY HAVE THE EFFECT OF CLOUDING RATHER THAN CLARIFYING ISSUES. WE WOULD LIKE TO THINK THAT A SELECTIVE USE OF QUALIFIED WITNESSES WHO ARE EXAMINED IN THE AREAS OF THEIR PARTICULAR KNOWLEDGE WOULD ACCOMPLISH THE DESIRED PURPOSE.

50. HAVING REGARD TO ALL OF THE EVIDENCE AND REPRESENTATIONS, THE BOARD DIRECTS THAT THE COMPLAINANT FRASER-BRACE ENGINEERING COMPANY, LIMITED MAKE THE FOLLOWING WORK ASSIGNMENTS WITH REGARD TO THE DISMANTLING OF THE "BUILT-IN-PLACE" WALL FORMS BEING USED ON THE FALCONBRIDGE NICKEL MINE IRON ORE CONCENTRATOR PROJECT AT FALCONBRIDGE:

1. THE RELEASING OF THE WEDGES OR CLAMPS AND THE REMOVAL OF THE PLYWOOD SHEETING FROM THE CONCRETE SURFACE OF THE WALL SHALL BE ASSIGNED TO MEMBERS OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486.
2. THE STRIPPING OF THE BRACES, STRONGBACKS, WALERS AND STUDS SHALL BE ASSIGNED TO MEMBERS OF THE LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION 493.

DECISION OF BOARD MEMBER R. W. TEAGLE: JANUARY 21, 1969.

THIS DISPUTE CONCERNING THE STRIPPING OF BUILT-IN-PLACE FORMS STEMS FROM THE ATTEMPT OF THE CARPENTERS UNION TO ENFORCE AN AGREEMENT CALLED "MEMORANDUM ON CONCRETE FORMS" DATED OCTOBER 3RD, 1949, SUPRA. THIS AGREEMENT WAS SIGNED BY SENIOR INTERNATIONAL OFFICERS OF THE RESPONDENT UNIONS. ALTHOUGH THE NATIONAL JOINT BOARD FOR THE SETTLEMENT OF JURISDICTIONAL DISPUTES IN WASHINGTON, D.C. HAS REFERRED TO THIS AGREEMENT IN SOME DECISIONS, NO CASES WERE PRESENTED TO THE BOARD WHERE REASONS FOR THEIR DECISIONS WERE GIVEN. WE ARE ASKED TO GIVE WEIGHT TO THESE DECISIONS OF THE NATIONAL JOINT BOARD, BUT ON READING THE DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD OF THE UNITED STATES, WHICH IS THE FINAL AUTHORITY FOR THE SETTLEMENT OF JURISDICTIONAL DISPUTES IN THE UNITED STATES, WHERE THE PARTIES HAVE NOT AGREED TO BE BOUND BY THE NATIONAL JOINT BOARD, THEY GIVE LITTLE WEIGHT TO THE DECISIONS OF THE NATIONAL JOINT BOARD WHERE NO REASONS ARE GIVEN. SEE:

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

BUILDING AND CONSTRUCTION TRADES COUNCIL
OF LAS VEGAS AND LOCAL 525, UNITED
ASSOCIATION OF JOURNEYMEN AND APPRENTICES
OF THE PLUMBING AND PIPEFITTING INDUSTRY
OF THE UNITED STATES AND CANADA, AFL-CIO
[LAS VEGAS, NEVADA] CASE 31-CD-26

AND

CHARLES J. DORFMAN AND UNDERGROUND
ENGINEERING CONTRACTORS ASSOCIATION
AND

INTERNATIONAL HOD CARRIERS, AND
COMMON LABORERS, LOCAL 872

IF THE NATIONAL LABOR RELATIONS BOARD IN THE UNITED STATES GIVES LITTLE WEIGHT TO THE DECISIONS OF THE NATIONAL JOINT BOARD WHERE NO REASONS ARE GIVEN, I SEE NO REASON WHY THE ONTARIO LABOUR RELATIONS BOARD SHOULD GIVE THEM ANY WEIGHT.

AS TO THE MERITS OF THE DISPUTE, THE ONTARIO LABOUR RELATIONS BOARD IN THE CANADA MILLRIGHTS LIMITED CASE, 13034-67-JD, SET UP SOME OF THE CRITERIA IT WOULD LOOK AT IN SETTLING JURISDICTIONAL DISPUTES:

(1) CLAIMS IN CONSTITUTION

(2) CLAIMS IN COLLECTIVE AGREEMENTS WITH EMPLOYER
IN DISPUTE

- (3) WRITTEN AGREEMENTS OR INFORMAL UNDERSTANDINGS
- (4) RULING, AWARDS, DECISIONS OF TRIBUNALS
- (5) PAST PRACTICE IN AREA OR INDUSTRY
- (6) SKILLS, SAFETY, EFFICIENCY AND ECONOMY

- (1) THE CONSTITUTIONS OF THE UNIONS ARE OF VERY LITTLE HELP AS THEY OVERLAP IN THEIR CLAIMS.
- (2) COLLECTIVE AGREEMENTS - THESE ARE OF NO ASSISTANCE IN THIS CASE AS THE LABOURERS' AGREEMENT HAS NO JURISDICTIONAL CLAUSE.
- (3) WRITTEN AGREEMENTS OR UNDERSTANDINGS - NO EVIDENCE WAS SUBMITTED TO SHOW THAT THE CONTRACTORS WERE CONSULTED BEFORE THE UNIONS MADE AN AGREEMENT OR THAT ANY OF THE LOCALS IN ONTARIO WERE CONSULTED. NO EVIDENCE WAS PRODUCED THAT THE AGREEMENT OF OCTOBER 3RD, 1949 FROM WHICH THIS DISPUTE STEMMED WAS ADOPTED BY LOCALS OF SAID UNIONS IN ONTARIO OR FOLLOWED OR THAT THE INDUSTRY HEARD OF IT UNTIL ONLY RECENTLY.
- (4) RULING, AWARDS AND DECISIONS OF TRIBUNALS - AS PREVIOUSLY STATED, I WOULD NOT GIVE THESE RULINGS, AWARDS AND DECISIONS UNSUBSTANTIATED BY REASONS ANY WEIGHT.
- (5) PAST PRACTICE IN AREA OR INDUSTRY - ALTHOUGH MUCH EVIDENCE WAS PRODUCED RE PAST PRACTICE, NO EVIDENCE WAS SUBMITTED COVERING THE EVENTS THAT LED UP TO THE SIGNING OF THE OCTOBER 3RD, 1949 AGREEMENT. I WOULD FIND ON AREA PRACTICE THAT THE LABOURERS HAVE A VALID CLAIM TO ALL THE WORK OF STRIPPING BUILT-IN-PLACE FORMS.
- (6) SKILLS, SAFETY, EFFICIENCY AND ECONOMY -

SKILLS - WITNESSES FOR BOTH THE CARPENTERS UNION AND LABOURERS UNION TESTIFIED THAT NO SKILL WAS REQUIRED TO DO THE WORK. THE MAJORITY DECISION IN PARAGRAPH 45 STATES, "A CERTAIN AMOUNT OF CARE IS REQUIRED IN REMOVING THE PLYWOOD SHEETING FROM THE CONCRETE SO AS NOT TO MAR THE CONCRETE ITSELF OR DAMAGE THE SHEETING WHICH IS TO BE RE-US ED." CARE CAN BE EXERCISED BY A LABOURER AS WELL AS A CARPENTER AND IS NOT RELATED TO SKILL. THE PANEL OF THE BOARD HEARING THIS DISPUTE VISITED THE SITE AND OBSERVED A WALL BEING STRIPPED. THE CARE EXERCISED CONSISTED OF - AFTER THE PLYWOOD SHEETING WAS STRIPPED FROM THE WALL IT WAS THROWN FROM THE SCAFFOLD TO THE GROUND.

AS NO SKILL IS REQUIRED AND VERY LITTLE CARE WAS SHOWN IT IS DIFFICULT TO UNDERSTAND WHY THE CARPENTERS UNION, WHICH CALLS ITSELF A CRAFT UNION, SHOULD TRY TO ASSERT JURISDICTION OVER WORK WHERE NO SKILL IS REQUIRED AND ASK TO BE PAID CARPENTERS RATES OF PAY FOR IT. THE PROVINCIAL GOVERNMENT AT GREAT EXPENSE OPERATES AN APPRENTICESHIP SYSTEM TO HELP BOYS TO LEARN THE SKILLED TRADE OF CARPENTRY. SURELY THIS WOULD APPEAR TO BE A WASTE OF PUBLIC FUNDS IF A BOY ON BECOMING A JOURNEYMAN CARPENTER SEEKS TO DO WORK FOR WHICH THE SKILL OR TRAINING OF A CARPENTER IS NOT REQUIRED. THERE CERTAINLY MUST BE SOME WORK SET ASIDE FOR THOSE THAT HAVE NOT BEEN FORTUNATE ENOUGH OR HAD THE OPPORTUNITY TO LEARN A SKILLED TRADE.

SAFETY - ON LOOKING AT THE WORK, THE HAZARDS OF THE JOB DO NOT APPEAR TO BE A DETERMINATIVE FACTOR IN SETTLING JURISDICTION.

EFFICIENCY AND ECONOMY - THE MAJORITY OF THE EMPLOYERS TESTIFIED THAT FROM THE POINT OF VIEW OF ECONOMY AND EFFICIENCY THEY WOULD RATHER EMPLOY LABOURERS TO DO THE WORK THAN CARPENTERS AND IN MOST CASES WHERE CARPENTERS HAVE BEEN USED IT HAS BEEN DONE UNDER PRESSURE FROM THE CARPENTERS UNION.

THE MAJORITY DECISION IN PARAGRAPH 46 MAKES THE STATEMENT "THAT CARPENTERS HAVE ESTABLISHED A VIABLE JURISDICTIONAL CLAIM TO THE WORK OF RELEASING THE HARDWARE AND REMOVING THE PLYWOOD SHEETING IN THE DISMANTLING OF WALL FORMS." I FIND NOTHING IN ANY OF THE AWARDS UNSUBSTANTIATED BY REASONS OR IN ANY OF THE EVIDENCE WHERE THE CARPENTERS HAVE ESTABLISHED A CLAIM TO ANY OF THE WORK AND I WOULD SO FIND AND AWARD ALL OF THE WORK OF STRIPPING BUILT-IN-PLACE WALL FORMS TO THE LABOURERS.

THERE IS A FURTHER PROBLEM TO THE STRIPPING OF CONCRETE WALL FORMS UPON WHICH NO EVIDENCE WAS PRODUCED, ALTHOUGH IT WAS TOUCHED ON SLIGHTLY IN ARGUMENT AND THAT IS THAT IN THE MODERN MANAGEMENT APPROACH TO CONSTRUCTION, SOPHISTICATED METHODS OF SCHEDULING ARE BEING DEVELOPED SUCH AS CRITICAL PATH AND ONE OF THE KEYS TO THIS APPROACH IS THE BALANCED WORK FORCE SO THAT THE WORK WILL RUN EFFICIENTLY WITHOUT TOO SUDDEN A CHANGE IN NUMBERS REQUIRED IN EACH GANG OF CARPENTERS AND LABOURERS. THIS IS ESPECIALLY IMPORTANT IN REMOTE AREAS WHERE GANGS OF MEN CANNOT BE BUILT UP AND CUT BACK AS QUICKLY AS IN CITIES. THE PRINCIPLE OF THE BALANCED WORK FORCE, HOWEVER, IS STILL VALID IN CITIES. FOR THIS REASON, I WOULD MAKE THE PROVISO THAT CARPENTERS CAN BE USED ON ALL STRIPPING OF WALL FORMS WHEN NO OTHER WORK FOR THEM IS AVAILABLE BUT THAT THE LABOURERS GET FIRST CALL ON THE WORK, AND THAT THE JURISDICTION FOR ALL OF THE STRIPPING OF WALL FORMS BELONGS TO THE LABOURERS UNION.

14920-(A)-68-JD: BEER PRECAST CONCRETE LIMITED (COMPLAINANT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 AND THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION NUMBER 736 (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: B. W. BINNING AND W. WHITE FOR THE COMPLAINANT, R. KOSKIE AND A. NEIL FOR LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506, A. E. GOLDEN, W. BROOK, D. ALDER AND P. A. THOMSON FOR INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION NUMBER 736.

DECISION OF THE BOARD:

JANUARY 9, 1969.

1. ON JULY 30TH, 1968, THE COMPLAINANT (HEREINAFTER REFERRED TO AS BEER PRECAST) MADE A COMPLAINT UNDER SECTION 66 OF THE LABOUR RELATIONS ACT IN WHICH IT REQUESTED THAT THE BOARD ISSUE AN INTERIM ORDER AND DIRECTION WITH RESPECT TO A WORK ASSIGNMENT WHICH IT HAD MADE. MORE PARTICULARLY, BEER PRECAST STATED IN ITS COMPLAINT THAT THE WORK IN DISPUTE WAS ALL THE WORK INVOLVED IN THE ERECTION OF PRECAST WALL CLADDING AT THE UNIVERSITY OF GUELPH PHYSICAL SCIENCE COMPLEX, STAGE I. BEER PRECAST FURTHER STATED IN ITS COMPLAINT THAT IT HAD ASSIGNED ALL OF THIS WORK TO THE RESPONDENT LABOURERS (HEREINAFTER REFERRED TO AS LABOURERS' LOCAL 506) WITH THE EXCEPTION OF CERTAIN TASKS WHICH BEER PRECAST ASSIGNED TO THE RESPONDENT IRONWORKERS (HEREINAFTER REFERRED TO AS IRONWORKERS' LOCAL 736) ON JULY 29TH, 1968. THE RELIEF WHICH BEER PRECAST IS SEEKING IS A DIRECTION BY THE BOARD ASSIGNING ALL OF THE WORK IN DISPUTE TO THE LABOURERS' LOCAL 506.

2. PURSUANT TO SUBSECTION (2) OF SECTION 66, THE BOARD CONSULTED WITH THE PARTIES AND MADE AN INTERIM ORDER DATED AUGUST 6TH, 1968, DIRECTING BEER PRECAST TO ASSIGN THE WORK IN DISPUTE TO MEMBERS OF LABOURERS' LOCAL 506, IN ACCORDANCE WITH ITS ORIGINAL ASSIGNMENT. THE MATTER WAS SCHEDULED FOR CONTINUATION OF HEARING ON SEPTEMBER 25TH, 1968 FOR THE PURPOSE OF ENTERTAINING THE COMPLAINT ON ITS MERITS. AT THE COMMENCEMENT OF THE HEARING ON THAT DATE COUNSEL FOR IRONWORKERS' LOCAL 736 CHALLENGED THE BOARD'S JURISDICTION TO ENTERTAIN THE COMPLAINT ON THE GROUNDS THAT THE COMPLAINT DID NOT FALL WITHIN THE PURVIEW OF SECTION 66(1) OF THE ACT.

3. IN SUPPORT OF HIS CHALLENGE COUNSEL FOR THE IRONWORKERS' LOCAL 736 ADVANCED TWO SUBMISSIONS. FIRST, COUNSEL ARGUED THAT THE DECISION OF MCRUER, C.J.H.C. IN THE CANADIAN PITTSBURGH INDUSTRIES LIMITED V. H. ORLIFFE ET AL. CASE (1961) C.C.H. CANADIAN LABOUR LAW CASES, VOL. 2, 1960-1964, 15,373, AND THE DECISION OF GRANT J. IN THE WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION,

LOCAL 97 V. ORLIFFE ET AL. CASE (1963) C.C.H. CANADIAN LABOUR LAW CASES, VOL. 2, 1960-1964, 15,495, STAND FOR THE PROPOSITION THAT A COMPLAINANT EMPLOYER MUST HAVE A COLLECTIVE BARGAINING RELATIONSHIP WITH BOTH DISPUTING UNIONS TO VEST IN THE BOARD JURISDICTION UNDER SECTION 66(1). COUNSEL ALLEGED, AND IT WAS NOT DISPUTED, THAT BEER PRECAST HAD NO COLLECTIVE BARGAINING RELATIONSHIP WITH IRONWORKERS' LOCAL 736 AT THE RELEVANT TIME. COUNSEL ARGUES THEREFORE THAT THE BOARD EXCEEDED ITS JURISDICTION IN ISSUING ITS INTERIM ORDER DATED AUGUST 6TH, 1968 AND WAS WITHOUT JURISDICTION TO DEAL WITH THE COMPLAINT ON ITS MERITS.

4. THE SECOND SUBMISSION OF COUNSEL WAS THAT UNDER SECTION 66(1) OF THE ACT, THE BOARD COULD ONLY INQUIRE INTO A COMPLAINT THAT A "TRADE UNION OR COUNCIL OF TRADE UNIONS, OR AN OFFICER, OFFICIAL OR AGENT OF A TRADE UNION OR COUNCIL OF TRADE UNIONS" WAS OR IS REQUIRING AN EMPLOYER TO ASSIGN PARTICULAR WORK TO EMPLOYEES IN A PARTICULAR TRADE UNION OR IN A PARTICULAR TRADE, CRAFT OR CLASS RATHER THAN EMPLOYEES IN ANOTHER TRADE UNION OR IN ANOTHER TRADE, CRAFT OR CLASS. COUNSEL ALLEGED THAT IT WAS PIGOTT CONSTRUCTION COMPANY LIMITED (HEREINAFTER REFERRED TO AS PIGOTT) THE GENERAL CONTRACTOR ON THE PROJECT AND NOT THE IRONWORKERS' LOCAL 736 WHO WERE REQUIRING THE COMPLAINANT TO ASSIGN PART OF THE DISPUTED WORK TO IRONWORKERS. COUNSEL ARGUES THAT IN THESE CIRCUMSTANCES, THE REQUIREMENT FOR MAKING A COMPLAINT UNDER SECTION 66(1) HAS NOT BEEN MET. ON THIS GROUND ALSO, COUNSEL SUBMITTED THE BOARD WAS WITHOUT JURISDICTION.

5. AFTER CONSIDERING THE REPRESENTATIONS OF COUNSEL FOR IRONWORKERS' LOCAL 736 AND COUNSEL FOR THE OTHER PARTIES TO THE PROCEEDING, THE BOARD RULED THAT ON THE BASIS OF THE ALLEGATIONS CONTAINED IN THE COMPLAINT, THE BOARD HAD JURISDICTION TO ENTERTAIN THE COMPLAINT. THE BOARD'S RULING, HOWEVER, WAS MADE CONTINGENT ON BEER PRECAST BEING ABLE TO ADDUCE EVIDENCE TO SUPPORT ITS ALLEGATIONS THAT IT WAS THE IRONWORKERS' LOCAL 736 WHO REQUIRED PIGOTT TO MAKE THE COMPLAINANT HIRE AN IRONWORKERS FOR A PART OF THE WORK IN DISPUTE.

6. COUNSEL FOR THE IRONWORKERS' LOCAL 736 REQUESTED THAT THE BOARD NOT PROCEED WITH THE HEARING OF THE COMPLAINT ON ITS MERITS IN ORDER TO ALLOW HIM AN OPPORTUNITY TO INSTITUTE AN ACTION IN THE COURTS CHALLENGING THE BOARD'S RULING TAKING JURISDICTION. THE BOARD ACCDED TO COUNSEL'S REQUEST ON THE UNDERSTANDING THAT HE WOULD INSTITUTE SUCH PROCEEDINGS IMMEDIATELY. ON SEPTEMBER 26TH, 1968, THE BOARD WAS SERVED WITH A COPY OF AN ORIGINATING NOTICE OF MOTION IN THE SUPREME COURT OF ONTARIO FOR AN ORDER QUASHING THE BOARD'S INTERIM ORDER DATED AUGUST 6TH, 1968 AND PROHIBITING THE BOARD FROM HEARING OR CONDUCTING ANY FURTHER PROCEEDING WITH RESPECT TO THE COMPLAINT.

7. THE MOTION WAS HEARD BEFORE FRASER, J. ON OCTOBER 23RD AND 24TH, 1968. MR. JUSTICE FRASER, IN HIS DECISION RELEASED ON NOVEMBER 13TH, 1968, UPHELD THE RULING OF THE BOARD IN TAKING JURISDICTION. WITH REGARD TO THE FIRST SUBMISSION ADVANCED BY COUNSEL FOR THE IRONWORKERS' LOCAL 736 REFERRED TO ABOVE, FRASER, J. FOUND THAT SUBSECTION (1) OF SECTION 66 OF THE ACT WHICH CONFERS JURISDICTION NOWHERE LIMITS ITS APPLICABILITY TO DISPUTES BETWEEN UNIONS HAVING COLLECTIVE BARGAINING RIGHTS WITH THE EMPLOYER INVOLVED. WITH REGARD TO THE SECOND SUBMISSION OF COUNSEL OUTLINED ABOVE, FRASER, J. QUOTED THE MATERIAL FACTS SET OUT IN THE COMPLAINT UPON WHICH THE COMPLAINANT RELIES. THE MATERIAL FACTS READ AS FOLLOWS:

ALL THE WORK IN PARAGRAPH 4 HAS BEEN ASSIGNED TO MEMBERS OF THE SAID LABOURERS' LOCAL 506 SINCE THE COMMENCEMENT OF THE WORK ON ABOUT APRIL 30TH, 1968 TO JULY 29TH, 1968, AT WHICH TIME THE GENERAL CONTRACTOR, PIGOTT CONSTRUCTION COMPANY LIMITED, REQUIRED THE COMPLAINANT TO HIRE ONE MEMBER OF THE SAID IRONWORKERS LOCAL 736 BECAUSE THE IRONWORKERS LOCAL 736 WERE REQUIRING SUCH ASSIGNMENT THROUGH THE SAID PIGOTT CONSTRUCTION COMPANY LIMITED. WILLIAM BROOKS, BUSINESS AGENT OF THE SAID IRONWORKERS LOCAL 736 ADVISED THE COMPLAINANT'S SUPERINTENDENTS ON THE JOB ON JULY 29TH, 1968, THAT HIS UNION WAS GOING TO CHASE LOCAL 506 MEMBERS OFF THE PRECAST JOBS IN GUELPH, KITCHENER, HAMILTON AND ST. CATHERINES AND OTHER CITIES IN THAT AREA.

FRASER, J. THEREUPON MADE THE FOLLOWING STATEMENT IN HIS DECISION WITH RESPECT TO THE ABOVE PARAGRAPH:

FROM A CONSIDERATION OF THE WORDING OF THAT PARAGRAPH AND ALSO OF THE OTHER PARAGRAPHS OF THE COMPLAINT IT IS PLAIN THAT THE GIST OF BEER'S COMPLAINT IS THE ALLEGATION THAT IRON WORKERS INSTIGATED OR CAUSED THE ACTION OF PIGOTT ALLEGED IN THE COMPLAINT. WHETHER THAT ALLEGATION HAS BEEN PROVED IS A QUESTION OF FACT WITHIN THE EXCLUSIVE JURISDICTION OF THE BOARD.

8. FRASER, J. ALSO CONSIDERED THE MEANING OF THE WORD "AGENT" AS USED IN SECTION 66(1) AND IN HIS DECISION EXPRESSED THE OPINION THAT IT WAS USED IN ITS ORDINARY COLLOQUIAL SENSE. AFTER QUOTING THE OXFORD ENGLISH DICTIONARY (1888 ED.) OF THE MEANING OF AGENT WITH REFERENCE TO PERSONS, HE MADE THE FOLLOWING STATEMENT:

HAVING REGARD TO ITS CONTEXT AND THE PURPOSE OF THE STATUTE IN WHICH IT IS FOUND I AM SATISFIED THAT "AGENT" IN SECTION 66 IS USED IN ITS BROAD GENERAL SENSE RATHER THAN IN A NARROW SPECIALIZED SENSE SUCH AS IS FOUND IN THE LAW OF CONTRACTS. TO HOLD THAT A UNION COULD AVOID THE EFFECT OF SECTION 66 BY INTERPOSING SOME THIRD PERSON OR AGENCY TO DO THE REQUIRING WOULD GIVE SECTION 66 AN UNDULY RESTRICTIVE MEANING AND FRUSTRATE THE PLAIN PURPOSE OF THE ENACTMENT.

9. FOLLOWING THE RELEASE OF MR. JUSTICE FRASER'S DECISION, THE BOARD LISTED THE COMPLAINT FOR CONTINUATION OF HEARING ON THE MERITS OF THE DISPUTE. AT THE HEARING ON DECEMBER 18TH, 1968, COUNSEL FOR THE COMPLAINANT ADDUCED EVIDENCE IN SUPPORT OF THE MATERIAL FACTS UPON WHICH IT RELIED. THE RELEVANT EVIDENCE IS SUMMARIZED BELOW.

10. PETER HESS, THE GENERAL MANAGER OF OPERATIONS FOR PIGOTT AT THE UNIVERSITY OF GUELPH PHYSICAL SCIENCE COMPLEX, STAGE I, IDENTIFIED A SUBCONTRACT DATED AUGUST 12TH, 1967, WHICH WAS EXECUTED BY BEER PRECAST AND PIGOTT ON DECEMBER 12TH, 1967. BY SECTION 15 OF THE SUBCONTRACT, BEER PRECAST UNDER TOOK ONLY TO EMPLOY PERSONS WITH UNION AFFILIATIONS THAT WERE COMPATIBLE WITH THE CONDITIONS UNDER WHICH PIGOTT WAS CARRYING ON ITS CONTRACT WITH THE OWNER AND UNDER CONDITIONS WHICH WERE SATISFACTORY TO PIGOTT. HESS ALSO IDENTIFIED A COLLECTIVE AGREEMENT BETWEEN PIGOTT AND IRONWORKERS' LOCAL 736 AND LOCAL 721 EFFECTIVE FROM SEPTEMBER 20TH, 1967 TO APRIL 30TH, 1969. BY ARTICLE 27 OF THAT AGREEMENT, PIGOTT UNDERTOOK NOT TO SUBCONTRACT ANY WORK COVERED BY THE AGREEMENT TO ANY PERSON FORM OR CORPORATION WHICH WAS NOT IN CONTRACTUAL RELATIONSHIP WITH THE IRONWORKERS OR ANY OF ITS AFFILIATED LOCAL UNIONS. HESS, AS WELL, IDENTIFIED A TRADE AGREEMENT DATED JUNE 12TH, 1964 TO WHICH THE LABOURERS' LOCAL 506 AND THE IRONWORKERS' LOCAL 736 AND LOCAL 721 ARE SIGNATORIES. THE AGREEMENT PROVIDES, IN PART, THAT "ALL RIGGING, HOOKING ON, SIGNALLING, LANDING, SHIMMING AND ANCHORING WORK INCLUDING WELDING AND BOLTING AND IN CONNECTION WITH ERECTION AND INSTALLATION OF COLUMNS, BEAMS, BRIDGE GIRDER AND FACIAL PANELS" IS TO BE DONE BY MEMBERS OF THE IRONWORKERS' UNION.

11. THE EVIDENCE OF HESS IS THAT THE COMPLAINANT COMMENCED TO ERECT ARCHITECTURAL PRECAST WALL CLADDING, WHICH IS THE WORK IN DISPUTE, IN APRIL OF 1968, EMPLOYING MEMBERS OF LABOURERS' LOCAL 506 TO DO THE WORK. THE IRONWORKERS' LOCALS 736 AND 721 FILED A GRIEVANCE UNDER ITS COLLECTIVE AGREEMENT WITH PIGOTT ALLEGING THAT PIGOTT VIOLATED ARTICLE 27 OF THE AGREEMENT BY SUBCONTRACTING THE ABOVE WORK TO BEER PRECAST WHICH WAS NOT IN

CONTRACTUAL RELATIONSHIP WITH THE IRONWORKERS OR ANY OF ITS AFFILIATED LOCAL UNIONS. A BOARD OF ARBITRATION ESTABLISHED TO HEAR AND MAKE A DETERMINATION ON THE GRIEVANCE RELEASED ITS AWARD ON JUNE 12TH, 1968. THE BOARD FOUND THAT PIGOTT WAS IN BREACH OF ITS COLLECTIVE AGREEMENT BY ITS SUBCONTRACT WITH BEER PRECAST.

12. FOLLOWING THE RELEASE OF THE AWARD, HESS WROTE A LETTER DATED JUNE 24TH, 1968 TO THE COMPLAINANT, THE BODY OF WHICH READS:

RE: DOMINION STORE DISTRIBUTION CENTER AND
GUELPH UNIVERSITY PHYSICAL SCIENCE
COMPLEX PHASE I

YOU ARE FAMILIAR WITH THE DETAILS REGARDING THE RECENT ARBITRATION IN RESPECT TO THE ABOVE CONTRACTS.

IN ACCORDANCE WITH THE DECISION MADE BY THE ARBITRATION BOARD INCLUDING THE TRADE AGREEMENT BETWEEN THE IRON WORKERS AND THE LABOURERS UNION, WE REQUEST THAT YOU COMPLY WITH THIS TRADE AGREEMENT EMPLOYING THE REQUIRED CATEGORIES OF EMPLOYEES FROM THE RESPECTIVE UNIONS AS STATED IN THE AGREEMENT. THE ABOVE REQUEST IS MADE TO YOU IN ACCORDANCE WITH SECTION 15 OF YOUR SUB-CONTRACT.

HESS TESTIFIED THAT THE PURPOSE IN SENDING THE LETTER WAS TO PERMIT BEER PRECAST TO CONTINUE TO PERFORM THE WORK IN DISPUTE UNDER ITS CONTRACT, BUT ONLY IN COMPLIANCE WITH THE AWARD OF THE BOARD OF ARBITRATION.

13. LELIO ANGELANTONIO, WHO AT THE RELEVANT TIMES WAS EMPLOYED BY BEER PRECAST AS ERECTION MANAGER ON THE GUELPH UNIVERSITY PROJECT, TESTIFIED THAT HE WAS AWARE OF THE LETTER SENT BY HESS TO BEER PRECAST DATED JUNE 24TH, 1968. HE FURTHER TESTIFIED THAT BARNEY RICHARD, PIGOTT'S SUPERINTENDENT ON THE PROJECT, INSTRUCTED HIM (ANGELANTONIO) TO HIRE IRONWORKERS IN ACCORDANCE WITH THE LETTER. ANGELANTONIO'S EVIDENCE IS THAT HE COMMUNICATED WITH WILLIAM BROOK, THE BUSINESS AGENT FOR IRONWORKERS' LOCAL 736 AND ARRANGED FOR AN IRONWORKER TO REPORT TO WORK ON THE PROJECT ON THE MORNING OF JULY 16TH, 1968. AN IRONWORKER, ONE JOHN IRWIN, DID REPORT FOR WORK AT THE BEGINNING OF THE SHIFT ON THAT MORNING. WHEN THE LABOURERS BECAME AWARE OF HIS PRESENCE, HOWEVER, THEY WALKED OFF THE JOB. IN THE RESULT, NO ERECTION WORK WAS DONE BY THE LABOURERS OR IRWIN ON THAT DAY.

ACCORDING TO ANGELANTONIO, RICHARD DIRECTED THAT IRWIN NOT BE EMPLOYED ON THE PROJECT THE FOLLOWING DAY. THE LABOURERS RETURNED TO WORK ON JULY 17TH.

14. THE EVIDENCE IS THAT FOLLOWING A NUMBER OF CONVERSATIONS AMONG BROOK, DONALD ALDER, A BUSINESS AGENT FOR LABOURERS' LOCAL 506, RICHARD, JOHN BASSO, A SUPERINTENDENT ON THE GUELPH UNIVERSITY PROJECT EMPLOYED BY BEER PRECAST, AND ANGELANTONIO, THE LATTER WAS AGAIN INSTRUCTED BY THE PIGOTT OFFICE AND RICHARD TO EMPLOY AN IRONWORKER ON THE DISPUTED WORK COMMENCING ON JULY 29TH. IRWIN ONCE MORE REPORTED TO THE PROJECT ON THAT DAY AND WORKED THE ENTIRE DAY CLEANING INSERTS WHICH CONNECT THE PANELS. AT THE END OF THE DAY T. NEIL, ANOTHER LABOURERS' BUSINESS AGENT, APPEARED ON THE PROJECT AND "PULLED" THE LABOURERS OFF THE JOB.

15. BASSO TESTIFIED THAT DURING A CONVERSATION WITH BROOK, THE LATTER ADVISED HIM THAT BEER PRECAST HAD TO USE A COMPOSITE CREW OF TWO LABOURERS, TWO IRONWORKERS AND A STONEMASON ON THE ERECTION WORK IN DISPUTE. ACCORDING TO BASSO, BROOK TOLD HIM THAT IF BEER PRECAST DID NOT EMPLOY IRONWORKERS ON THE JOB, THE IRONWORKERS "WERE GOING TO CHASE BEER ALL OVER CANADA". BASSO'S EVIDENCE IS THAT NEIL, ON THE OTHER HAND, MADE IT CLEAR TO HIM THAT IF IRONWORKERS WERE USED ON THE JOB HE WAS GOING TO "PULL" THE LABOURERS OFF THE JOB. HE, IN FACT, DID SO ON BOTH JULY 16TH AND JULY 29TH. ON JULY 30TH, 1968, BEER PRECAST MADE THE INSTANT COMPLAINT.

16. THE BOARD OF ARBITRATION REFERRED TO ABOVE FOUND THAT PIGOTT ACTED IN BREACH OF ITS COLLECTIVE AGREEMENT WITH THE IRONWORKERS' LOCALS 736 AND 721 BY SUBCONTRACTING THE ERECTION OF PRECAST CLADDING ON THE UNIVERSITY OF GUELPH PROJECT TO BEER PRECAST. PIGOTT, HOWEVER, DID NOT CANCEL OR TAKE OVER THE CONTRACT OF BEER PRECAST ON THAT PROJECT AS A RESULT OF THE AWARD. RATHER PIGOTT DIRECTED BEER PRECAST TO HIRE IRONWORKERS TO PERFORM CERTAIN OF THE ERECTION WORK OVER WHICH THE IRONWORKERS CLAIMED JURISDICTION. PIGOTT WAS MOTIVATED TO DO SO BECAUSE ONLY THIS COURSE OF ACTION WOULD MOLLIFY THE IRONWORKERS.

17. IT WAS ADMITTED THAT THE IRON WORKERS HAD BEEN TRYING FOR SOME PERIOD OF TIME TO MAKE BEER PRECAST HIRE IRONWORKERS TO DO CERTAIN PHASES OF THE WORK IN DISPUTE. BASED ON THE EVIDENCE IT IS FAIR TO SAY THAT THE IRONWORKERS WERE CONTENT TO HAVE BEER PRECAST RETAIN ITS CONTRACT WITH PIGOTT, PROVIDED THAT BEER PRECAST RECOGNIZED THE JURISDICTIONAL CLAIM OF THE IRONWORKERS TO PARTS OF THE ERECTION WORK AND EMPLOYED IRONWORKERS TO DO THAT WORK. TO ENSURE SUCH RECOGNITION THE EVIDENCE SUPPORTS THE

CONCLUSION THAT THE IRONWORKERS APPLIED PRESSURE TO, OR INSTIGATED, PIGOTT TO REQUIRE BEER PRECAST TO EMPLOY IRONWORKERS. STATED ANOTHER WAY, PIGOTT WAS THE AGENT OF THE IRONWORKERS, AS THE WORD "AGENT" IN SECTION 66(1) OF THE ACT IS INTERPRETED BY MR. JUSTICE FRASER, IN REQUIRING BEER PRECAST TO HIRE A MEMBER OF THE IRONWORKERS' LOCAL 736. WE WOULD ADD THAT, IN ANY EVENT, ON THE EVIDENCE WE FIND THAT THE IRONWORKERS' LOCAL 736 DIRECTLY, WITHOUT THE AEGIS OF PIGOTT, ALSO REQUIRED BEER PRECAST TO HIRE ONE OF ITS MEMBERS.

18. THE BOARD ACCORDINGLY FINDS THAT BEER PRECAST HAS ESTABLISHED IN EVIDENCE THE MATERIAL FACTS UPON WHICH IT RELIES IN ITS COMPLAINT. THE CONDITIONS PRECEDENT TO THE BOARD TAKING JURISDICTION UNDER SECTION 66(1), IN THIS REGARD, HAVE BEEN SATISFIED.

19. ONLY ONE OTHER ISSUE WITH RESPECT TO THE BOARD'S JURISDICTION UNDER SECTION 66(1) OF THE ACT REMAINS TO BE DEALT WITH. ON JULY 29TH, 1968, BEER PRECAST HAD IN ITS EMPLOY ON THE GUELPH UNIVERSITY PROJECT A MEMBER OF THE IRONWORKERS' LOCAL 736 AND A NUMBER OF MEMBERS OF THE LABOURERS' LOCAL 506. IT IS THESE TWO UNIONS THAT ARE ASSERTING CONFLICTING JURISDICTIONAL CLAIMS OVER THE WORK THAT IS THE SUBJECT OF THE INSTANT DISPUTE. ON JULY 30TH, HOWEVER, MEMBERS OF NEITHER UNION WERE WORKING ON THE PROJECT. THIS WAS BECAUSE MEMBERS OF LABOURERS' LOCAL 506 WENT ON STRIKE AT THE END OF THE SHIFT ON JULY 29TH.

20. THE DECISION IN PITTSBURGH INDUSTRIES LIMITED V. H. ORLIFFE ET AL. CASE (SUPRA) HOLDS THAT THE BOARD ONLY HAS JURISDICTION UNDER SECTION 66(1) TO MAKE AN INTERIM ORDER OR DIRECTION WHERE THE EMPLOYER HAS IN HIS EMPLOY ON THE PROJECT WHERE THE WORK ASSIGNMENT DISPUTE ARISES, MEMBERS OF BOTH DISPUTING UNIONS. THE DECISION IN THE WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 97 V. ORLIFFE ET AL. CASE (SUPRA), HOWEVER, BROADENED THE INTERPRETATION TO BE PLACED ON THE PREVIOUS DECISION BY HOLDING THAT IT WAS SUFFICIENT IF THE EMPLOYER HAD IN HIS EMPLOY, AT THE RELEVANT TIME, MEMBERS OF BOTH DISPUTING UNIONS, REGARDLESS OF WHETHER THEY WERE EMPLOYED ON A PROJECT OR PROJECTS OTHER THAN WHERE THE DISPUTE AROSE. THE QUESTION IS, WHAT CONSTITUTES "THE RELEVANT TIME"?

21. SUBSECTION (2) OF SECTION 66 PROVIDES THAT THE BOARD CAN MAKE AN INTERIM ORDER WITH RESPECT TO A DISPUTE OVER AN ASSIGNMENT OF WORK WHEN A STRIKE IS IMMINENT OR IS TAKING PLACE. IN THE LATTER SITUATION, THE EMPLOYER WOULD NOT HAVE MEMBERS OF BOTH, AND POSSIBLY NEITHER DISPUTING UNIONS AT WORK. YET OBVIOUSLY SUBSECTION (2) CONTEMPLATES THE MAKING OF COMPLAINTS UNDER SUBSECTION (1) OF SECTION 66 WHEN A STRIKE HAS OCCURRED.

THE ONLY LOGICAL CONCLUSION, AND WE SO FIND, IS THAT THE "RELEVANT TIME" IS THE TIME WHEN THE DISPUTE AROSE. OUR FINDING CONFORMS WITH THE DECISION OF BROOKE, J. IN REGINA V. ONTARIO LABOUR RELATIONS BOARD EX PARTE BENNETT AND WRIGHT (1968) C.C.H. CANADIAN LABOUR LAW REPORTER, VOL. 2, 14,116. AT P. 11,600 HE MAKES THE FOLLOWING STATEMENT WITH REGARD TO SECTION 66(1):

GIVING EFFECT TO THE PLAIN MEANING OF THE WORDS OF THE SECTION, I CANNOT REACH ANY OTHER CONCLUSION THAN THAT THE JURISDICTION OF THE BOARD TO MAKE A DIRECTION OR INTERIM ORDER IS LIMITED TO CASES WHERE THERE ARE EMPLOYEES EMPLOYED BY THE EMPLOYER IN EACH OF THE COMPETING TRADE UNIONS AT THE TIME OF THE CONDUCT WHICH IS THE BASIS OF THE COMPLAINT.

(THE UNDERLINGING IS FOR EMPHASIS)

22. THE "RELEVANT TIME" OR THE TIME OF THE CONDUCT WHICH IS THE BASIS OF THE INSTANT COMPLAINT IS JULY 29TH, 1968. ON THAT DATE BEER PRECAST HAD MEMBERS OF BOTH OF THE RESPONDENT UNIONS EMPLOYED ON THE PROJECT IN DISPUTE. ACCORDINGLY, THE BOARD HAS JURISDICTION UNDER SECTION 66(1) OF THE ACT TO ENTERTAIN THE COMPLAINT.

23. THE BOARD THEREFORE DIRECTS THAT THE REGISTRAR LIST THIS MATTER FOR CONTINUATION OF HEARING ON THE MERITS OF THE COMPLAINT.

15406(A)-68-JD: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (COMPLAINANT) V. TORONTO FORMING (1965) LIMITED AND WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 562 (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: A. E. GOLDEN AND T. MICHAEL FOR THE COMPLAINANT, JOHN P. SANDERSON AND JOHN LONG FOR THE RESPONDENT COMPANY, ROBIN B. CUMINE FOR THE RESPONDENT UNION.

DECISION OF THE BOARD: JANUARY 10, 1969.

• • •

2. THIS IS A COMPLAINT MADE UNDER SECTION 66 OF THE LABOUR RELATIONS ACT.

3. THE COMPLAINANT (HEREINAFTER REFERRED TO AS THE IRON WORKERS) ALLEGES THAT ON NOVEMBER 25TH, 1968, AND FOR A CERTAIN PERIOD PRIOR TO THAT DATE AND UP TO THE TIME OF THE FILING OF THE COMPLAINT ON DECEMBER 2ND, 1968, THE RESPONDENT COMPANY (HEREINAFTER REFERRED TO AS TORONTO FORMING) WAS ASSIGNING THE WORK OF HANDLING, PLACING AND SETTING REINFORCING CONCRETE MATERIAL ON A PROJECT AT 125 WELLINGTON STREET WEST IN MARKHAM VILLAGE TO MEMBERS OF THE RESPONDENT TRADE UNION (HEREINAFTER REFERRED TO AS THE LATHERS). THE IRON WORKERS FURTHER ALLEGED THAT ON NOVEMBER 26TH, 1968, T. MICHAEL, A BUSINESS AGENT OF THE IRON WORKERS, SENT A REGISTERED LETTER TO TORONTO FORMING REQUESTING THAT THE ABOVE WORK BE ASSIGNED TO MEMBERS OF THE IRON WORKERS. ACCORDING TO THE IRON WORKERS, THIS REQUEST HAS NOT BEEN ACKNOWLEDGED AND TORONTO FORMING HAS CONTINUED TO ASSIGN THE WORK TO MEMBERS OF THE LATHERS.

4. TORONTO FORMING IS A PARTY TO A COLLECTIVE AGREEMENT WITH THE LATHERS. THIS AGREEMENT WAS EXECUTED ON NOVEMBER 4TH, 1968 AND REMAINS IN EFFECT UNTIL JANUARY 31ST, 1974. BY THE AGREEMENT TORONTO FORMING RECOGNIZES THE LATHERS AS THE COLLECTIVE BARGAINING AGENT FOR ALL CONSTRUCTION EMPLOYEES IN THE EMPLOY OF TORONTO FORMING ENGAGED IN CONSTRUCTION WORK.

5. EVIDENCE WAS ADDUCED BY THE IRON WORKERS WHICH SATISFIED THE BOARD THAT AT LEAST ONE OF THE EMPLOYEES OF TORONTO FORMING WHO WAS EMPLOYED ON THE PROJECT AT 125 WELLINGTON STREET WEST IN MARKHAM VILLAGE AT THE TIME THAT THE DISPUTE AROSE WAS A MEMBER OF THE IRON WORKERS. MEMBERS OF THE LATHERS WERE ALSO EMPLOYED ON THE PROJECT AT THE SAME TIME.

6. COUNSEL FOR TORONTO FORMING ADVISED THE BOARD (AND IT WAS NOT DISPUTED) THAT THE COMPANY ASSIGNED GROUPS OF EMPLOYEES WHO WERE TRAINED IN FORMING WORK TO PERFORM A VARIETY OF DIFFERENT TASKS AS REQUIRED RELATED TO FORMING WORK. THIS PRACTICE WAS FOLLOWED PRIOR TO TORONTO FORMING ENTERING INTO THE COLLECTIVE AGREEMENT WITH THE LATHERS AND CONTINUED TO BE FOLLOWED AFTER THE AGREEMENT WAS EXECUTED. COUNSEL ALLEGES THAT THE WORK ASSIGNMENTS WERE MADE WITHOUT CONSIDERATION AS TO THE UNION, TRADE, CRAFT OR CLASS TO WHICH THE EMPLOYEES BELONGED. COUNSEL CONTENTS THAT BEFORE THE BOARD CAN TAKE JURISDICTION UNDER SECTION 66 THERE MUST BE TWO IDENTIFIABLE UNIONS, TRADES, CRAFTS OR CLASSES, BOTH OF WHICH ARE ASSERTING A CLAIM TO JURISDICTION OVER THE WORK IN DISPUTE. COUNSEL SUBMITS THAT HAVING REGARD TO THE MANNER IN WHICH TORONTO FORMING MAKES ITS WORK ASSIGNMENTS THERE ARE NO SUCH IDENTIFIABLE CONTENDING GROUPS AND THEREFORE IT CANNOT BE SAID THAT THE COMPANY HAS EXERCISED A PREFERENCE FOR ONE UNION, TRADE, CRAFT OR CLASS OVER ANOTHER.

7. COUNSEL FOR THE LATHERS LENT HIS SUPPORT TO THE ABOVE ARGUMENT. HE LAID PARTICULAR STRESS, HOWEVER, ON THE LANGUAGE OF SECTION 66(1) WHICH PROVIDES THAT THE BOARD MAY INQUIRE INTO A COMPLAINT "THAT AN EMPLOYER WAS OR IS ASSIGNING WORK TO EMPLOYEES IN A PARTICULAR TRADE UNION RATHER THAN TO EMPLOYEES IN ANOTHER TRADE UNION". BASED ON THE MANNER IN WHICH TORONTO FORMING MAKES ITS WORK ASSIGNMENTS, COUNSEL ARGUES THAT IT CANNOT BE SAID THAT THIS REQUIREMENT HAS BEEN MET. COUNSEL ACCORDINGLY SUBMITS THAT THE BOARD IS WITHOUT JURISDICTION TO ENTERTAIN THE COMPLAINT.

8. BY THE COLLECTIVE AGREEMENT ENTERED INTO WITH THE LATHERS, TORONTO FORMING IS OBLIGATED TO ASSIGN ALL OF THE WORK IN DISPUTE TO MEMBERS OF THE LATHERS. THE FACT THAT SOME MEMBERS OF THE LATHERS ALSO MAY BE MEMBERS OF THE IRON WORKERS IS NOT A RELEVANT CONSIDERATION. THE FACT IS THAT BY EXECUTING THE AGREEMENT WITH THE LATHERS WHICH PROVIDES THAT TORONTO FORMING WILL ONLY EMPLOY MEMBERS OF THE LATHERS, THE COMPANY CLEARLY INDICATED ITS PREFERENCE FOR MEMBERS OF THE LATHERS OVER MEMBERS OF THE IRON WORKERS TO PERFORM THE WORK THAT IS THE SUBJECT OF THE INSTANT DISPUTE AND HAS ASSIGNED THE WORK ACCORDINGLY. WE THEREFORE CANNOT ACCEPT THE SUBMISSIONS OF COUNSEL FOR THE RESPONDENTS AND FIND THAT THE PREREQUISITE CONDITIONS TO THE BOARD TAKING JURISDICTION HAVE BEEN MET.

9. COUNSEL FOR THE RESPONDENTS ALSO SUBMIT THAT THE LANGUAGE OF SECTION 66(1) REQUIRES THAT AN EMPLOYER HAVE IN HIS EMPLOY MORE THAN ONE MEMBER OF BOTH DISPUTING UNIONS AT THE TIME THE DISPUTE AROSE BEFORE THE BOARD CAN TAKE JURISDICTION. IT WAS ARGUED THAT THE COMPLAINANT ONLY ESTABLISHED IN EVIDENCE THAT IT HAD ONE MEMBER OF THE IRON WORKERS IN ITS EMPLOY AT THE RELEVANT TIME.

10. SECTION 27(j) OF THE INTERPRETATION ACT R.S.O. 1960 c. 191 PROVIDES THAT "WORDS IMPORTING THE SINGULAR NUMBER OR THE MASCULINE GENDER ONLY INCLUDE MORE PERSONS, PARTIES OR THINGS OF THE SAME KIND THAN ONE, AND FEMALES AS WELL AS MALES AND THE CONVERSE". (THE UNDERLINING IS ADDED FOR EMPHASIS.) ON THE BASIS OF THE ABOVE PROVISION, IT IS CLEAR THAT THE USE OF THE PLURAL "EMPLOYEES" IN SECTION 66(1) ALSO HAS REFERENCE TO THE SINGULAR "EMPLOYEE". SEE ALSO P. 10 OF THE DECISION OF FRASER J. RELEASED ON NOVEMBER 13TH, 1968, IN THE BEER PRECAST CONCRETE LIMITED CASE (UNREPORTED). ACCORDINGLY, ON THIS GROUND AS WELL THE CHALLENGE TO THE JURISDICTION OF THE BOARD MUST FAIL.

11. THE BOARD FINDS THAT IT HAS JURISDICTION TO DEAL WITH THE INSTANT COMPLAINT AND DIRECTS THAT THE REGISTRAR LIST THIS MATTER FOR A CONTINUATION OF HEARING ON THE MERITS OF THE COMPLAINT.

15507(a)-68-JD: CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY (COMPLAINANT) v. WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 562 AND VERO FORMS LIMITED (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG AND R. REID FOR THE COMPLAINANT, ROBIN B. CUMINE FOR THE RESPONDENT UNION, JOHN P. SANDERSON FOR THE RESPONDENT COMPANY.

DECISION OF THE BOARD:

JANUARY 29, 1969.

1. THE NAMES "WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION LOCAL 562 AND VERO FORMS LTD." APPEARING IN THE STYLE OF CAUSE OF THIS COMPLAINT AS THE NAMES OF THE RESPONDENTS ARE AMENDED TO READ: "WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 562 AND VERO FORMS LIMITED".

2. THIS IS A COMPLAINT MADE UNDER SECTION 66 OF THE LABOUR RELATIONS ACT.

3. THE MATERIAL FACTS UPON WHICH THE COMPLAINANT RELIES ARE SET OUT BELOW. SINCE APPROXIMATELY NOVEMBER 4TH, 1968, THE RESPONDENT COMPANY HAS ASSIGNED THE WORK IN DISPUTE, A PROJECT AT 100 - 120 DUNDAS STREET EAST, COOKSVILLE, TO MEMBERS OF THE RESPONDENT TRADE UNION. SUBSEQUENT TO THE COMMENCEMENT OF THE ASSIGNMENT, FRED LEGER AND WILLIAM MORRIS, BUSINESS REPRESENTATIVES OF THE COMPLAINANT, REQUESTED MR. PISANO AND MR. ROSS, RESPECTIVELY, TO ASSIGN THE WORK IN DISPUTE TO MEMBERS OF THE COMPLAINANT RATHER THAN TO MEMBERS OF THE RESPONDENT. MESSRS. PISANO AND ROSS REFUSED TO REASSIGN THE WORK AS REQUESTED AND THE RESPONDENT COMPANY CONTINUES TO ASSIGN THE WORK TO MEMBERS OF THE RESPONDENT UNION.

4. THE WORK IN DISPUTE IS: (A) THE BUILDING, ERECTING AND REPAIRING OF ALL CONCRETE FORMS, (B) THAT PART OF THE STRIPPING OF FORMS, WHETHER FOR COLUMNS, BEAMS OR WALLS NORMALLY PERFORMED BY CARPENTER MEMBERS OF COMPOSITE STRIPPING CREWS COMPOSED OF CARPENTERS AND LABOURERS.

5. THERE IS EVIDENCE BEFORE THE BOARD THAT AS OF THE DATE THAT THE DISPUTE AROSE THE RESPONDENT COMPANY HAD IN ITS EMPLOY ONE MEMBER OF THE COMPLAINANT TRADE UNION. MEMBERS OF THE RESPONDENT TRADE UNION ALSO WERE EMPLOYED ON THE PROJECT AT THE SAME TIME.

6. IN ITS REPLY THE RESPONDENT COMPANY STATES THAT THE WORK IN DISPUTE HAS BEEN ASSIGNED IN ACCORDANCE WITH A SUBSISTING COLLECTIVE BARGAINING AGREEMENT WITH THE RESPONDENT UNION AND INDUSTRY PRACTICE. THERE WAS FILED WITH THE BOARD A COPY OF A CURRENT COLLECTIVE AGREEMENT WHEREBY THE RESPONDENT COMPANY RECOGNIZES THE RESPONDENT UNION AS THE COLLECTIVE BARGAINING AGENT FOR ALL OF ITS CONSTRUCTION EMPLOYEES ENGAGED IN CONSTRUCTION WORK.

7. COUNSEL FOR THE RESPONDENT COMPANY AND COUNSEL FOR THE RESPONDENT TRADE UNION CHALLENGED THE JURISDICTION OF THE BOARD TO ENTERTAIN THE COMPLAINT ON THE BASIS OF THE SUBMISSIONS SET OUT IN PARAGRAPHS 6, 7 AND 9 OF THE BOARD'S DECISION DATED JANUARY 10TH, 1969 IN THE TORONTO FORMING (1965) LIMITED CASE, BOARD FILE NO. 15406(A)-68-JD.

8. FOR THE SAME REASONS SET OUT IN PARAGRAPHS 8 AND 10 OF THE ABOVE-REFERRED TO DECISION THE BOARD FINDS THAT IT HAS JURISDICTION TO DEAL WITH THE COMPLAINT.

15515(A)-68-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (COMPLAINANT) v. WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 562 AND RELLI FORMS LIMITED (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN AND BOARD MEMBERS R. W. TEAGLE AND E. BOYER.

APPEARANCES AT THE HEARING: R. KOSKIE AND T. NEIL FOR THE COMPLAINANT, JOHN P. SANDERSON FOR THE RESPONDENT COMPANY, ROBIN B. CUMINE FOR THE RESPONDENT UNION.

DECISION OF THE BOARD: JANUARY 21, 1969.

• • •

2. THIS IS A COMPLAINT MADE UNDER SECTION 66 OF THE LABOUR RELATIONS ACT.

3. THE MATERIAL FACTS UPON WHICH THE COMPLAINT RELIES ARE SET OUT BELOW. ON NOVEMBER 4TH, 1968 AND FOR A CERTAIN PERIOD PRIOR TO THIS DATE THE RESPONDENT COMPANY WAS ASSIGNING THE WORK IN DISPUTE ON AN APARTMENT BUILDING PROJECT AT THE EAST SIDE OF BLEECKER STREET NEAR WELLESLEY STREET EAST, TORONTO TO MEMBERS OF THE RESPONDENT UNION. ON JANUARY 2ND, 1969, TONY NEIL, A BUSINESS REPRESENTATIVE OF THE COMPLAINANT REQUESTED A. DiMATTEO, A REPRESENTATIVE OF THE RESPONDENT COMPANY TO ASSIGN THE WORK IN DISPUTE TO MEMBERS OF THE COMPLAINANT RATHER THAN TO MEMBERS OF THE RESPONDENT TRADE UNION. THE SAID A. DiMATTEO REFUSED TO RE-ASSIGN THE WORK AS REQUESTED AND THE RESPONDENT COMPANY CONTINUES TO ASSIGN THE WORK TO MEMBERS OF THE RESPONDENT UNION.

4. THE WORK IN DISPUTE IS:

(A) THE POURING, PLACING, SPREADING AND VIBRATING OF ALL CONCRETE USED IN CONCRETE CONSTRUCTION;

- (B) THAT PORTION OF THE STRIPPING OF ALL CONCRETE FORMS NORMALLY ASSIGNED TO AND PERFORMED BY LABOURER MEMBERS OF CONCRETE FORMING CREWS;
- (C) MOVING, CLEANING, OILING AND CARRYING TO THE NEXT POINT OF ERECTION OF ALL CONCRETE FORMS AND MATERIALS USED TO BUILD THE SAME;
- (D) MOVING, CLEANING AND CARRYING OF ALL OTHER MATERIALS USED IN CONNECTION WITH THE CONCRETE FORMING OPERATIONS;
- (E) ALL GENERAL CLEAN-UP WORK INCLUDING CLEANING AND CLEARING OF ALL USED AND UNUSED MATERIAL RELATING TO CONCRETE FORMWORK.

5. THERE IS EVIDENCE BEFORE THE BOARD THAT AS OF THE DATE THAT THE DISPUTE AROSE THE RESPONDENT COMPANY HAD IN ITS EMPLOY ONE MEMBER OF THE COMPLAINANT TRADE UNION. MEMBERS OF THE RESPONDENT TRADE UNION ALSO WERE EMPLOYED ON THAT PROJECT AT THE SAME TIME.

6. IN ITS REPLY THE RESPONDENT COMPANY STATES THAT THE WORK IN DISPUTE HAS BEEN ASSIGNED IN ACCORDANCE WITH A SUBSISTING COLLECTIVE BARGAINING AGREEMENT WITH THE RESPONDENT UNION AND INDUSTRY PRACTICE. THERE WAS FILED WITH THE BOARD A COPY OF A CURRENT COLLECTIVE AGREEMENT WHEREBY THE RESPONDENT COMPANY RECOGNIZES THE RESPONDENT UNION AS THE COLLECTIVE BARGAINING AGENT FOR ALL OF ITS CONSTRUCTION EMPLOYEES ENGAGED IN CONSTRUCTION WORK.

7. COUNSEL FOR THE RESPONDENT COMPANY AND COUNSEL FOR THE RESPONDENT TRADE UNION CHALLENGED THE JURISDICTION OF THE BOARD TO ENTERTAIN THE COMPLAINT ON THE BASIS OF THE SUBMISSIONS SET OUT IN PARAGRAPHS 6, 7 AND 9 OF THE BOARD'S DECISION DATED JANUARY 10TH, 1969 IN THE TORONTO FORMING (1965) LIMITED CASE, BOARD FILE No. 15406(A)-68-JD.

8. FOR THE SAME REASONS SET OUT IN PARAGRAPHS 8 AND 10 OF THE ABOVE-REFERRED TO DECISION THE BOARD FINDS THAT IT HAS JURISDICTION TO DEAL WITH THE COMPLAINT.

15524(A)-68-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (COMPLAINANT) v. WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION, LOCAL 562 AND FORMING CONSTRUCTION LIMITED (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN AND BOARD
MEMBERS R. W. TEAGLE AND E. BOYER.

APPEARANCES AT THE HEARING: R. KOSKIE AND T. NEIL FOR THE
COMPLAINANT, JOHN P. SANDERSON FOR THE RESPONDENT COMPANY,
ROBIN B. CUMINE FOR THE RESPONDENT UNION.

DECISION OF THE BOARD: JANUARY 21, 1969.

• • •

2. THIS IS A COMPLAINT MADE UNDER SECTION 66 OF THE LABOUR
RELATIONS ACT.

3. THE MATERIAL FACTS UPON WHICH THE COMPLAINANT RELIES
ARE SET OUT BELOW: ON NOVEMBER 4TH, 1968 AND FOR A CERTAIN PERIOD
PRIOR TO THIS DATE, THE RESPONDENT COMPANY WAS ASSIGNING THE WORK
IN DISPUTE ON TWO APARTMENT BUILDING PROJECTS AT LOTS 105 AND 151
LAROSE AVENUE IN METROPOLITAN TORONTO TO MEMBERS OF THE RESPONDENT
TRADE UNION. ON JANUARY 2ND, 1969, THE COMPLAINANT REQUESTED THE
RESPONDENT COMPANY IN WRITING TO ASSIGN THE WORK IN DISPUTE TO
MEMBERS OF THE COMPLAINANT RATHER THAN TO MEMBERS OF THE RESPON-
DENT TRADE UNION. THE RESPONDENT COMPANY REFUSED TO RE-ASSIGN
THE WORK AS REQUESTED AND CONTINUES TO ASSIGN THE WORK TO MEMBERS
OF THE RESPONDENT TRADE UNION.

4. THE WORK IN DISPUTE IS:

- (A) THE POURING, PLACING, SPREADING AND VIBRATING
OF ALL CONCRETE USED IN CONCRETE CONSTRUCTION;
- (B) THAT PORTION OF THE STRIPPING OF ALL CONCRETE
FORMS NORMALLY ASSIGNED TO AND PERFORMED BY LABOURER
MEMBERS OF CONCRETE FORMING CREWS;
- (C) MOVING, CLEANING, OILING AND CARRYING TO THE
NEXT POINT OF ERECTION OF ALL CONCRETE FORMS AND
MATERIALS USED TO BUILD THE SAME;
- (D) MOVING, CLEANING AND CARRYING OF ALL OTHER
MATERIALS USED IN CONNECTION WITH THE CONCRETE
FORMING OPERATIONS;
- (E) ALL GENERAL CLEAN-UP WORK INCLUDING CLEANING
AND CLEARING OF ALL USED AND UNUSED MATERIAL
RELATING TO CONCRETE FORMWORK.

5. THERE IS EVIDENCE BEFORE THE BOARD THAT AS OF THE DATE
THAT DISPUTE AROSE THE RESPONDENT COMPANY HAD IN ITS EMPLOY TWO
MEMBERS OF THE COMPLAINANT TRADE UNION. MEMBERS OF THE RESPONDENT
UNION ALSO WERE EMPLOYED ON THE PROJECTS AT THE SAME TIME.

6. IN ITS REPLY THE RESPONDENT COMPANY STATES THAT THE WORK IN DISPUTE HAS BEEN ASSIGNED IN ACCORDANCE WITH A SUBSISTING COLLECTIVE BARGAINING AGREEMENT WITH THE RESPONDENT UNION AND INDUSTRY PRACTICE. THERE WAS FILED WITH THE BOARD A COPY OF A CURRENT COLLECTIVE AGREEMENT WHEREBY THE RESPONDENT COMPANY RECOGNIZES THE RESPONDENT UNION AS THE COLLECTIVE BARGAINING AGENT FOR ALL OF ITS CONSTRUCTION EMPLOYEES ENGAGED IN CONSTRUCTION WORK.

7. COUNSEL FOR THE RESPONDENT COMPANY AND COUNSEL FOR THE RESPONDENT TRADE UNION CHALLENGED THE JURISDICTION OF THE BOARD TO ENTERTAIN THE COMPLAINT ON THE BASIS OF THE SUBMISSIONS SET OUT IN PARAGRAPHS 6 AND 7 OF THE BOARD'S DECISION DATED JANUARY 10TH, 1969 IN THE TORONTO FORMING (1965) LIMITED CASE. BOARD FILE NO. 15406(A)-68-JD.

8. FOR THE SAME REASONS SET OUT IN PARAGRAPH 8 OF THE ABCVE REFERRED TO DECISION THE BOARD FINDS THAT IT HAS JURISDICTION TO DEAL WITH THE COMPLAINT.

EXCERPTS FROM DECISIONS IN CONSTRUCTION INDUSTRY CASES

15430-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) v. V. R. EVANS CONSTRUCTION LIMITED (RESPONDENT).

7. AN EXAMINER WAS APPOINTED IN THIS CASE ON DECEMBER 16TH, 1968, TO INQUIRE INTO THE COMPOSITION OF THE BARGAINING UNIT AND THE LIST OF EMPLOYEES FILED BY THE RESPONDENT. THE BOARD HAS CAREFULLY CONSIDERED THE REPORT OF THE EXAMINER TOGETHER WITH THE REPRESENTATIONS OF THE PARTIES THEREON. IT IS CLEAR FROM THE EVIDENCE OF GILES LEBLOND AND ARTHUR LEBLOND THAT ON DECEMBER 4TH, 1968, THE DATE OF THE MAKING OF THE APPLICATION, BOTH WERE ENGAGED IN SHOP WORK. THIS WORK, NOT BEING "ON SITE" WORK, DOES NOT COME WITHIN THE MEANING OF SECTION 1(1)(DA) OF THE LABOUR RELATIONS ACT. ACCORDINGLY, GILES LEBLOND AND ARTHUR LEBLOND WOULD NOT BE INCLUDED IN THE BARGAINING UNIT FOR THE PURPOSES OF THE COUNT.

8. IT IS CLEAR FROM THE REPORT THAT ROBERT ROSS WAS ENGAGED FOR THE MAJORITY OF HIS TIME IN DOING WORK WHICH IS CLAIMED BY THE APPLICANT TRADE UNION AS COMING WITHIN ITS JURISDICTION. THE OPPOSITE IS TRUE OF ADRIAN TURCOTTE. ACCORDINGLY, THE BOARD FINDS THAT ADRIAN TURCOTTE IS NOT AN EMPLOYEE INCLUDED IN THE BARGAINING UNIT AND THAT ROBERT ROSS IS AN EMPLOYEE INCLUDED IN THE BARGAINING UNIT. REFERENCE IS MADE TO NADEN FORMING COMPANY LIMITED CASE, O.L.R.B. MONTHLY REPORT, MAY 1965, p. 100.

15586-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
LOCAL UNION 93 (APPLICANT) v. STEINBERG'S LIMITED (RESPONDENT).

6. THE RESPONDENT HAS PROPOSED THAT THE GEOGRAPHIC AREA BE LIMITED TO THE COUNTY OF CARLETON ON THE GROUND THAT IT HAD NO EMPLOYEES IN THE BARGAINING UNIT WORKING IN THE COUNTIES OF RUSSELL AND PRESCOTT, WHICH COUNTIES THE APPLICANT PROPOSED SHOULD BE INCLUDED. THE THREE COUNTIES IN QUESTION CONSTITUTE THE ESTABLISHED BOARD GEOGRAPHIC AREA No. 15. THE SITUATION EXISTING IN THIS CASE IS NOT AN UNUSUAL ONE IN APPLICATIONS BEFORE THE BOARD AND WE SEE NO REASON FOR DEPARTING FROM OUR REGULAR GEOGRAPHIC AREA. THE BOARD THEREFORE FURTHER FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

STATISTICAL TABLES FOR JANUARY 1969

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	JANUARY 1969	NUMBER FILED	
		1ST 10 MONTHS OF 1968-69	FISCAL YEAR 1967-68
I. CERTIFICATION	69	826	758
II. DECLARATION TERMINATING BARGAINING RIGHTS	5	55	80
III. DECLARATION OF SUCCESSOR STATUS	2	13	16
IV. DECLARATION THAT STRIKE UNLAWFUL	1	33	31
V. DECLARATION THAT LOCK- OUT UNLAWFUL	1	7	12
VI. CONSENT TO PROSECUTE	-	87	83
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	11	140	143
VIII. MISCELLANEOUS	13	64	61
TOTAL	<u>102</u>	<u>1225</u>	<u>1184</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	JANUARY 1969	NUMBER	
		1ST 10 MONTHS OF 1968-69	FISCAL YEAR 1967-68
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	91	869	729

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY MAJOR TYPES

		NUMBER DISPOSED OF	
	JANUARY 1969	1ST 10 MTHS 1968-69	FISCAL YR. 1967-68
I. CERTIFICATION	77	863	787
II. DECLARATION TERMINATING BARGAINING RIGHTS	9	51	78
III. DECLARATION OF SUCCESSOR STATUS	2	15	13
IV. DECLARATION THAT STRIKE UNLAWFUL	3	35	31
V. DECLARATION THAT LOCK- OUT UNLAWFUL	1	6	12
VI. CONSENT TO PROSECUTE	18	98	87
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	9	158	154
VIII. MISCELLANEOUS	<u>15</u>	<u>56</u>	<u>61</u>
TOTAL	<u><u>134</u></u>	<u><u>1282</u></u>	<u><u>1223</u></u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS
BOARD BY TYPE AND DISPOSITION

	NUMBER OF APPLICATIONS			NUMBER OF EMPLOYEES*		
	JANUARY 1969	1ST 10 MTHS 1968-69	FISCAL YR. 1967-68	JANUARY 1969	1ST 10 MTHS 1968-69	FISCAL 1967-68

I. CERTIFICATION

GRANTED	42	582	553	1268	18629	22971
DISMISSED	22	198	172	1354	7400	10450
WITHDRAWN	13	83	62	440	1555	1480
TOTAL	<u>77</u>	<u>863</u>	<u>787</u>	<u>3062</u>	<u>27584</u>	<u>34901</u>

II. TERMINATION
OF BARGAINING
RIGHTS

GRANTED	5	28	34	138	722	948
DISMISSED	3	18	42	9	543	972
WITHDRAWN	1	5	2	53	161	41
TOTAL	<u>9</u>	<u>51</u>	<u>78</u>	<u>200</u>	<u>1426</u>	<u>1961</u>

*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD
BY TYPE AND DISPOSITION (CONTINUED)

	NUMBER OF APPLICATIONS		
	JANUARY 1969	1ST 10 MONTHS 1968-69	FISCAL YR. 1967-68

III. DECLARATION THAT STRIKE
UNLAWFUL

GRANTED	2	3	3
DISMISSED	-	2	3
WITHDRAWN	<u>1</u>	<u>30</u>	<u>25</u>
TOTAL	<u><u>3</u></u>	<u><u>35</u></u>	<u><u>31</u></u>

IV. DECLARATION THAT LOCKOUT
UNLAWFUL

GRANTED	-	-	-
DISMISSED	-	3	1
WITHDRAWN	<u>1</u>	<u>3</u>	<u>11</u>
TOTAL	<u><u>1</u></u>	<u><u>6</u></u>	<u><u>12</u></u>

V. CONSENT TO PROSECUTE

GRANTED	3	25	6
DISMISSED	1	13	11
WITHDRAWN	<u>14</u>	<u>60</u>	<u>70</u>
TOTAL	<u><u>18</u></u>	<u><u>98</u></u>	<u><u>87</u></u>

VI. COMPLAINT OF UNFAIR
PRACTICE IN EMPLOYMENT
(SECTION 65)

GRANTED	2	10	5
DISMISSED	5	42	7
WITHDRAWN	<u>2</u>	<u>106</u>	<u>4</u>
TOTAL	<u><u>9</u></u>	<u><u>158</u></u>	<u><u>16</u></u>

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	JANUARY 1ST 10 MTHS	FISCAL YR.	
1969	1968-69	1967-68	

CERTIFICATION AFTER VOTE*

PRE-HEARING VOTE	-	12	18
POST-HEARING VOTE	2	39	38
BALLOTS NOT COUNTED	-	-	-

DISMISSED AFTER VOTE

PRE-HEARING VOTE	1	5	11
POST-HEARING VOTE	6	34	33
BALLOTS NOT COUNTED	-	1	3
TOTAL	<u>9</u>	<u>91</u>	<u>103</u>

*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY
THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	JANUARY	1ST 10 MTHS	FISCAL YR.
1969	1968-69	1967-68	

*RESPONDENT UNION SUCCESSFUL	2	4	1
RESPONDENT UNION UNSUCCESSFUL	<u>5</u>	<u>21</u>	<u>17</u>
TOTAL	<u>7</u>	<u>25</u>	<u>18</u>

*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT

JANUARY 1969

Government
Publications



ONTARIO

Monthly Report



TARIO LABOUR RELATIONS BOARD

1.	CERTIFICATION	
(a)	BARGAINING AGENTS CERTIFIED	1129
(b)	APPLICATIONS DISMISSED	1140
(c)	APPLICATIONS WITHDRAWN	1142
2.	APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS	1143
3.	APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS	1144
4.	APPLICATION FOR DECLARATION THAT STRIKE UNLAWFUL	1145
5.	COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE)	1145
6.	APPLICATION FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT	1146
7.	APPLICATIONS UNDER SECTION 47A	1146
8.	APPLICATION FOR DETERMINATION UNDER SECTION 79(2)	1147
9.	REFERENCE TO BOARD PURSUANT TO SECTION 79A	1147
10.	JURISDICTIONAL DISPUTES	1147
11.	APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION	1148
12.	INDEXED ENDORSEMENTS	
	CERTIFICATION	
	12984-67-R: THE GOVERNORS OF THE UNIVERSITY OF TORONTO	1149
	14086-67-R: NORTHERN ELECTRIC COMPANY LIMITED	1153
	14235-67-R: AUTOMATIC ELECTRIC (CANADA) LIMITED	1162
	15327-68-R: IMPERIAL LEAF TOBACCO COMPANY OF CANADA LIMITED	1168
	15337-68-R: CAPITAL CITY TRANSPORT LIMITED	1170
	15394-68-R: CORPORATION OF THE CITY OF LONDON, DR. JOHN DEARNES HOME FOR ELDER CITIZENS	1172
	15489-68-R: HUBERT TRANSPORT INC.	1174
	15494-68-R: COLUMBIAN CARBON (CANADA) LIMITED	1175
	15527-68-R: MAPLE LEAF MILLS LIMITED (KOMOKA BRANCH)	1177
	15530-68-R: THE BOARD OF HEALTH OF THE YORK- OSHAWA DISTRICT HEALTH UNIT	1178
	15543-68-R: GODERICH DISTRICT COLLEGIATE INSTITUTE	1180
	15554-68-R: ARO OF CANADA LIMITED	1181
	15565-68-R: R. REININGER & SON LTD.	1184
	TERMINATION	
	15194-68-R: S.K.D. MANUFACTURING CO. LIMITED	1185
	15434-68-R: KAP IMPERIAL SERVICE STATION	1186
	15601-68-R: NEATE CONSTRUCTION LTD.	1188
	15654-68-R: MODERN FOOT WEAR COMPANY	1190

	PAGE	
SECTION 65		
14818-68-U: POWELL AGRI-SYSTEMS LIMITED	1193	
15182-68-U:: SENTINEL HEATING SERVICES LIMITED	1193	
15289-68-U: MURRAY BROS. LUMBER Co. LTD.	1194	
15309-68-U: ITT CANADA LTD.	1199	
SECTION 47A		
15531-68-M: TOWN OF IROQUOIS FALLS; ABITIBI PAPER COMPANY LIMITED; INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS, LOCAL 90; CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 259, C.L.C.	1208	
15561-68-M: THE CUSTODIANS AND MAINTENANCE ASSOCIATION AND CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 269	1209	
SECTION 79A		
15509-68-M: RED LION INN (LONDON) LIMITED	1211	
15597-68-M: KING GEORGE RESTAURANT (REGISTERED)	1213	
15612-68-M: D. & D. CONTRACTORS	1215	
JURISDICTIONAL DISPUTES		
15614(A)-68-JD: F.A. ACTON	1216	
15650(A)-68-JD: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 AND THE FOUNDATION COMPANY OF CANADA LIMITED	1219	
RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION		
15304-68-R: TRW ELECTRONIC COMPONENTS LIMITED	1222	
15556-68-R: EVOY-MCLEAN LIMITED	1224	
15611-68-R: WIENER ELECTRIC LIMITED	1225	
RECONSIDERATION OF BOARD'S DECISION - SECTION 65		
15558-68-U: THE FOUNDATION COMPANY OF CANADA LIMITED AND A.D. ROSS AND COMPANY LIMITED	1226	
EXCERPT FROM DECISION IN CONSTRUCTION INDUSTRY CASE	1227	
<u>STATISTICAL TABLES FOR FEBRUARY 1969</u>		
TABLE		
I.	APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD	1228
II.	HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD	1228
III.	APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY MAJOR TYPES	1229
IV.	APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY TYPE AND DISPOSITION	1230
V.	REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD	1232
VI.	REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD	1232

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING FEBRUARY 1969

BARGAINING AGENTS CERTIFIED DURING FEBRUARY

NO VOTE CONDUCTED

15047-68-R: INTERNATIONAL UNION OF ELECTRICAL RADIO AND MACHINE WORKERS (APPLICANT) v. CANADIAN GYPSUM COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT 21 OAK STREET, IN THE BOROUGH OF YORK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (69 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE, THE TERM "FOREMAN" INCLUDES "WAREHOUSE SUPERVISOR" AND "MECHANIC 'A' - SUPERVISOR".

15325-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. UNITED COUNTIES OF NORTHUMBERLAND & DURHAM (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS ROADS DEPARTMENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, ENGINEERING STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (49 EMPLOYEES IN THE UNIT).

15327-68-R: TOBACCO WORKERS INTERNATIONAL UNION (A.F.L. C.I.O. & C.L.C.) (APPLICANT) v. IMPERIAL LEAF TOBACCO COMPANY OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT 252 POWER STREET, DELHI, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, GRADERS, BUYERS, CHIEF ENGINEER, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND SEASONAL EMPLOYEES." (19 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 1168).

15396-68-R: LOCAL UNION 2028, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, (AFL-CIO-CLC) (APPLICANT) v. THE PUBLIC UTILITIES COMMISSION OF THE TOWN OF BOWMANVILLE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT THE GENERAL MANAGER, PERSONS ABOVE THE RANK OF THE GENERAL MANAGER AND CLERK-TYPIST TO THE GENERAL MANAGER." (2 EMPLOYEES IN THE UNIT).

15404-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. H. J. MCFARLAND CONSTRUCTION COMPANY LIMITED (RESPONDENT) v. LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION 247 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND THE TOWNSHIPS OF PERCY, SEYMOUR, GRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, ENGAGED IN THE OPERATING OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (19 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE WRITTEN AGREEMENT OF THE PARTIES DATED FEBRUARY 13TH, 1969).

(THE APPLICANT CERTIFIED WITH RESPECT TO THE BARGAINING UNIT DESCRIBED ABOVE).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (15 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE WRITTEN AGREEMENT OF THE PARTIES DATED FEBRUARY 13TH, 1969).

(THE APPLICANT DISMISSED WITH RESPECT TO THE BARGAINING UNIT DESCRIBED ABOVE).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT: (A) THE CITY OF BELLEVILLE YARD ON WALLBRIDGE CRESCENT; (B) SMITH PIT IN CONCESSION 6 WEST OF HIGHWAY 14 IN SIDNEY TOWNSHIP; (C) ITS SHOP AND ASPHALT PLANT NORTH OF HIGHWAY 401 ON THE EAST SIDE OF HIGHWAY 14 NEAR FOXBOW; (D) ITS SHOP AT TALBOT AND MAIN STREETS, IN THE TOWN OF PICTON; SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, SALES STAFF, TRUCK DRIVERS AND THOSE EMPLOYEES COVERED BY EXISTING COLLECTIVE AGREEMENTS BETWEEN THE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 247 AND THE RESPONDENT AND BETWEEN THE INTERNATIONAL UNION OF DISTRICT 50, UNITED MINE WORKERS OF AMERICA, ON BEHALF OF LOCAL 14828 AND THE RESPONDENT AND BETWEEN THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 572 AND THE RESPONDENT." (35 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE WRITTEN AGREEMENT OF THE PARTIES DATED FEBRUARY 13TH, 1969).

(THE APPLICANT CERTIFIED WITH RESPECT TO THE BARGAINING UNIT DESCRIBED ABOVE).

15530-68-R: NURSES' ASSOCIATION YORK-OSHAWA DISTRICT HEALTH UNIT (APPLICANT) v. THE BOARD OF HEALTH OF THE YORK-OSHAWA DISTRICT HEALTH UNIT (RESPONDENT).

UNIT: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT IN THE COUNTY OF YORK AND CITY OF OSHAWA, SAVE AND EXCEPT SUPERVISORS OF NURSING AND PERSONS ABOVE THE RANK OF SUPERVISOR OF NURSING." (42 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 1178).

15553-68-R: PRINTING SPECIALTIES AND PAPER PRODUCTS UNION, LOCAL 466 (APPLICANT) v. THE OSHAWA WHOLESALE LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT 125 THE QUEENSWAY, TORONTO 18, EMPLOYED IN THE SILK SCREEN AND DUPLICATING DEPARTMENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, ARTISTS AND COMMERCIAL PHOTOGRAPHER, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (14 EMPLOYEES IN THE UNIT).

15554-68-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) v. ARO OF CANADA LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND SUPERVISORS; PERSONS ABOVE THE RANK OF FOREMAN OR SUPERVISOR; SECRETARIES TO THE PRESIDENT, THE INDUSTRIAL SALES MANAGER, THE AUTOMOTIVE SALES MANAGER AND THE AERONAUTICAL SALES MANAGER; PAYMASTER; FIELD SALES STAFF; STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD; AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE PARTIES." (24 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 1181).

15555-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. CANTREND INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS S. E. WOODS-TRAILER DIVISION AT NEWMARKET, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (133 EMPLOYEES IN THE UNIT).

ON THE BASIS OF THE EVIDENCE BEFORE US AND AFTER CONSIDERING THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT QUALITY CONTROL INSPECTORS ARE EMPLOYEES INCLUDED IN THE BARGAINING UNIT.

15564-68-R: INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA, AMALGAMATED PLANT GUARDS, LOCAL 1958 (APPLICANT) v. KELSEY-HAYES CANADA LIMITED (RESPONDENT).

UNIT: "ALL SECURITY GUARDS EMPLOYED BY THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (6 EMPLOYEES IN THE UNIT).

15565-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. R. REININGER & SON LTD. (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (110 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 1184).

15575-68-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES CATERERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. EASTWOOD FOOD SERVICES LIMITED (RESPONDENT) v. TEAMSTERS LOCAL UNION NO. 879 (INTERVENER).

UNIT: "ALL DRIVERS OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (10 EMPLOYEES IN THE UNIT).

15585-68-R: INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS, LODGE #704 (APPLICANT) v. R. J. CYR COMPANY LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (8 EMPLOYEES IN THE UNIT).

15589-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. WEST NIPISSING HOME FOR THE AGED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT STURGEON FALLS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND PERSONS COVERED BY A COLLECTIVE AGREEMENT

BETWEEN THE BOARD OF MANAGEMENT OF THE WEST NIPISSING HOME FOR THE AGED AND THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL #896, C.L.C., DATED JANUARY 1ST, 1966." (5 EMPLOYEES IN THE UNIT).

15590-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) v. W. BOLEN ENTERPRISES LIMITED - CARRYING ON BUSINESS UNDER THE NAME OF THE RIDOUT TAVERN (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON SAVE AND EXCEPT MANAGERS, PERSONS ABOVE THE RANK OF MANAGER, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (16 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT MANAGERS, PERSONS ABOVE THE RANK OF MANAGER, AND OFFICE STAFF." (6 EMPLOYEES IN THE UNIT).

15594-68-R: BROTHERHOOD OF PAINTERS, DECORATORS & PAPERHANGERS OF AMERICA, LOCAL 1819 (APPLICANT) v. QUEEN CITY GLASS (TORONTO) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN ARCHITECTURAL GLASS AND METAL CONTRACTORS ASSOCIATION AND GLAZIERS' LOCAL UNION 1819 OF THE BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, DATED JUNE 1ST, 1966." (11 EMPLOYEES IN THE UNIT).

15602-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) v. ALDERSHOT CONTRACTORS EQUIPMENT RENTAL LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

15603-68-R: TRENTON CONSTRUCTION WORKERS ASSOCIATION, LOCAL No. 52, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. PEACOCK PLASTERING SERVICE LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN ITS LATHING OPERATIONS IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, AND OFFICE STAFF." (3 EMPLOYEES IN THE UNIT).

15605-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. DENEAU STEELS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (3 EMPLOYEES IN THE UNIT).

15606-68-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. GREEN-VALE DAIRIES LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMAN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (15 EMPLOYEES IN THE UNIT).

15611-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. WIENER ELECTRIC LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD." (26 EMPLOYEES IN THE UNIT).

15615-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. ABC STEEL BUILDINGS LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BOLTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (34 EMPLOYEES IN THE UNIT).

15616-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. HECKETT ENGINEERING CO., DIVISION OF HARSCO CORPORATION (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PLANT #8 OF THE STEEL COMPANY OF CANADA LIMITED, HILTON WORKS AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (33 EMPLOYEES IN THE UNIT).

15617-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) v. KOBLIK CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

15624-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. UNITED JEWISH WELFARE FUND OF METROPOLITAN TORONTO (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT 150 AND 152 BEVERLEY STREET, TORONTO, SAVE AND EXCEPT ASSISTANT EXECUTIVE DIRECTOR, BUILDING SUPERINTENDENT, SECRETARY TO THE EXECUTIVE DIRECTOR, OFFICE MANAGER, COMPTROLLER, SOCIAL PLANNING DIRECTOR AND THOSE ABOVE THE RANK OF ASSISTANT EXECUTIVE DIRECTOR, BUILDING SUPERINTENDENT, SECRETARY TO THE EXECUTIVE DIRECTOR, OFFICE MANAGER, COMPTROLLER, AND SOCIAL PLANNING DIRECTOR." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15626-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL-CIO-CLC (APPLICANT) v. M. LOEB LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS CASH AND CARRY OPERATION AT SUDBURY, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, OFFICE AND SALES STAFF." (4 EMPLOYEES IN THE UNIT).

15627-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. UNITED JEWISH APPEAL OF METROPOLITAN TORONTO (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT 150 AND 152 BEVERLEY STREET, TORONTO, SAVE AND EXCEPT DIRECTOR OF I.B.M., SECRETARY TO THE EXECUTIVE DIRECTOR, PUBLIC RELATIONS DIRECTOR, COMPTROLLER, OFFICE MANAGER AND FUND RAISERS AND THOSE ABOVE THE RANK OF DIRECTOR OF I.B.M., SECRETARY TO THE EXECUTIVE DIRECTOR, PUBLIC RELATIONS DIRECTOR, COMPTROLLER, OFFICE MANAGER AND FUND RAISERS." (19 EMPLOYEES IN THE UNIT).

15628-68-R: BUILDING SERVICE EMPLOYEES' UNION, LOCAL 210, AFL-CIO-CLC, WINDSOR, ONTARIO (APPLICANT) v. WINDSOR HOSPITAL LINEN SERVICES INCORPORATED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND OFFICE STAFF." (15 EMPLOYEES IN THE UNIT).

15631-68-R: THE OXFORD COUNTY BOARD OF EDUCATION OFFICE EMPLOYEES' ASSOCIATION (APPLICANT) v. THE OXFORD COUNTY BOARD OF EDUCATION (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT PERSONS WHO EXERCISE MANAGERIAL FUNCTIONS OR ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS." (39 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

15633-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. REDFERN CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF ONTARIO (EXCEPT THE TOWNSHIPS OF PICKERING, RAMA, MARA AND THORAH) AND THE COUNTY OF DURHAM (EXCEPT THE TOWNSHIP OF HOPE), SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

15634-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. ANGELLOTTI CONTRACTING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

15635-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA (APPLICANT) v. WELLYN CONSTRUCTION (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

15638-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) v. RAPID CONSTRUCTION LTEE (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

15639-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) v. CONWOOD CONSTRUCTION LTD. BLDG CONTRS. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

15647-68-R: TRENTON CONSTRUCTION WORKERS ASSOCIATION, LOCAL #52, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. MEL BARRIAGE LANDSCAPING CONTRACTOR LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS, TRUCKS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

15657-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 183 (ROCK AND TUNNEL WORKERS DIVISIONS) (APPLICANT) v. BARLOCK LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF BALDWIN, SAVE AND EXCEPT THE RESIDENT SUPERINTENDENT." (34 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

15663-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. RAYMOND CONCRETE PILE COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS, AND SHOP AND YARD EMPLOYEES." (6 EMPLOYEES IN THE UNIT).

15665-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 249 (APPLICANT) v. ACOUSTIC PARTITIONS LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

15679-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 247 (APPLICANT) v. CATKEY CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

15682-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) v. JOHN COLFORD CONTRACTING CO. LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

15690-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. A. P. GREEN REFRACTORIES (CANADA) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

15337-68-R: GENERAL TRUCK DRIVERS UNION LOCAL 938 INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) v. CAPITAL CITY TRANSPORT LIMITED (RESPONDENT) v. CANADIAN TRANSPORTATION WORKERS' UNION No. 158, N.C.C.L. (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (23 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	20
NUMBER OF PERSONS WHO CAST BALLOTS	20
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	18
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	2

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

15500-68-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) v. SUPER CITY DISCOUNT FOODS LIMITED (RESPONDENT) v. UNION OF CANADIAN RETAIL EMPLOYEES (INTERVENER).

- AND -

15501-68-R: UNION OF CANADIAN RETAIL EMPLOYEES (APPLICANT) v. SUPER CITY DISCOUNT FOODS LIMITED (RESPONDENT) v. RETAIL CLERKS INTERNATIONAL ASSOCIATION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD IN THE RESPONDENT'S STORES IN THE COUNTY OF BRANT, EXCEPTING THEREFROM THE CITY OF BRANTFORD, SAVE AND EXCEPT STORE MANAGERS, PERSONS ABOVE THE RANK OF STORE MANAGER, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN UNION OF CANADIAN RETAIL EMPLOYEES AND THE RESPONDENT." (45 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS ¹	
LIST	32
NUMBER OF PERSONS WHO CAST BALLOTS	32
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT, RETAIL CLERKS INTER- NATIONAL ASSOCIATION	9
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT, UNION OF CANADIAN RETAIL EMPLOYEES	23

(UNION OF CANADIAN RETAIL EMPLOYEES CERTIFIED).

(THE APPLICATION OF RETAIL CLERKS INTERNATIONAL ASSOCIATION IS DISMISSED).

15540-68-R: PATTERN MAKERS' ASSOCIATION OF HAMILTON & VICINITY (AN AFFILIATED OF THE PATTERN MAKERS' LEAGUE OF N.A.) (APPLICANT) v. COSMOS PATTERN CO. (RESPONDENT).

UNIT: "ALL JOURNEYMAN PATTERN MAKERS AND PATTERN MAKER APPRENTICES IN THE EMPLOY OF THE RESPONDENT AT STONEY CREEK, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (2 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS ¹	
LIST	2
NUMBER OF PERSONS WHO CAST BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0

APPLICATIONS FOR CERTIFICATION DISMISSED DURING FEBRUARY

NO VOTE CONDUCTED

15097-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) v. CANADIAN GYPSUM COMPANY LIMITED (RESPONDENT). (3 EMPLOYEES).

15304-68-R: OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) v. TRW ELECTRONIC COMPONENTS LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS). (326 EMPLOYEES).

15489-68-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. HUBERT TRANSPORT INC. (RESPONDENT). (11 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 1174).

15527-68-R: INTERNATIONAL CHEMICAL WORKER'S UNION (APPLICANT) v. MAPLE LEAF MILLS LIMITED (KOMOKA BRANCH) (RESPONDENT). (8 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 1177).

15532-68-R: HOTEL & RESTAURANT EMPLOYEES & BARTENDERS INTERNATIONAL UNION, LOCAL 756, ST. CATHARINES, ONT. (APPLICANT) v. DINTER INVESTMENTS LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS). (11 EMPLOYEES).

15543-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (APPLICANT) v. GODERICH DISTRICT COLLEGiate INSTITUTE (RESPONDENT). (10 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 1180).

15609-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 249 KINGSTON ONT. (APPLICANT) v. A-W MILLWORK LTD. (RESPONDENT) v. TRENTON CONSTRUCTION WORKERS ASSOCIATION, LOCAL NO. 52, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (INTERVENER). (2 EMPLOYEES).

15655-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. A. P. GREEN REFRactories (CANADA) LIMITED (RESPONDENT). (5 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

15519-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. FEDERAL BOLT AND NUT CORPORATION LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (96 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	96
NUMBER OF PERSONS WHO CAST BALLOTS	94
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	36
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	58

15525-68-R: INTERNATIONAL PRINTING PRESSMEN & ASSISTANTS' UNION OF NORTH AMERICA (APPLICANT) v. THE RUNGE PRESS LIMITED (RESPONDENT) v. OTTAWA JOB PRINTERS' ASSOCIATION, LOCAL NO. 1, AFFILIATED WITH NATIONAL COUNCIL OF CANADIAN LABOUR (INTERVENER).

VOTING CONSTITUENCY: "ALL PRINTING TRADE WORKERS OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, MAINTENANCE STAFF, OFFICE AND SALES STAFF." (88 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	78
NUMBER OF PERSONS WHO CAST BALLOTS	78
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	27
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	50

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

15241-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) v. NIAGARA FRONTIER CATERERS LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ST. CATHARINES, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED UNDER A SUBSISTING COLLECTIVE

AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (33 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	32
NUMBER OF PERSONS WHO CAST BALLOTS	30
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	6
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	23

15430-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) v. V. R. EVANS CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY MILE RADIUS OF THE NORTH BAY POST OFFICE, SAVE AND EXCEPT NON-WORKING FOREMEN, AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	5
NUMBER OF PERSONS WHO CAST BALLOTS	5
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	5

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING FEBRUARY

15526-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) v. GRAFTON-FRASER LIMITED (RESPONDENT). (9 EMPLOYEES).

15625-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) v. LASALLE FOOD-MARTS LIMITED (RESPONDENT). (NO EMPLOYEES).

15644-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) v. ARROW-STEEL LTD. (RESPONDENT). (2 EMPLOYEES).

15672-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. THE VALLEY CITY MANUFACTURING CO LTD. (RESPONDENT). (147 EMPLOYEES).

15683-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) v. COLFORD MECHANICAL CONTRACTING COMPANY LIMITED (RESPONDENT). (NO EMPLOYEES).

15725-68-R: BROTHERHOOD OF PAINTERS, DECORATORS & PAPERHANGERS OF AMERICA, LOCAL UNION 1891 (APPLICANT) v. NORTH YORK ACOUSTIC (RESPONDENT) (2 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF
DURING FEBRUARY

14987-68-R: DAVID FABRIS (APPLICANT) v. MARBLE, TILE & TERRAZZO UNION No. 31(A) (RESPONDENT) v. CONTINENTAL TERRAZZO & TILE COMPANY LTD. (INTERVENER). (14 EMPLOYEES). (WITHDRAWN).

14988-68-R: ITALO MASI (APPLICANT) v. MARBLE, TILE & TERRAZZO UNION No. 31(A) (RESPONDENT) v. TIME TERRAZZO, TILES, MARBLE AND MOSAIC CO. LTD. (INTERVENER). (5 EMPLOYEES). (WITHDRAWN).

14989-68-R: GINO FANUTTI (APPLICANT) v. MARBLE, TILE & TERRAZZO UNION No. 31(A) (RESPONDENT) v. MERCURY TERRAZZO & TILE CO. LTD. (INTERVENER). (14 EMPLOYEES). (WITHDRAWN).

14990-68-R: BIAGIO AITA (APPLICANT) v. MARBLE, TILE & TERRAZZO UNION No. 31(A) (RESPONDENT) v. BLOOR TERRAZZO, TILE & MOSAIC LTD. (INTERVENER). (18 EMPLOYEES). (WITHDRAWN).

15194-68-R: EMPLOYEES OF S.K.D. MANUFACTURING COMPANY LIMITED (APPLICANT) v. INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, FORT MALDEN LODGE NO. 890 (RESPONDENT) v. S.K.D. MANUFACTURING CO. LIMITED (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF S.K.D. MANUFACTURING CO. LIMITED AT AMHERSTBURG, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFFS, TIME KEEPERS AND TIME STUDY MEN." (386 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	321
NUMBER OF PERSONS WHO CAST BALLOTS	320
NUMBER OF SPOILED BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	27
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	291

15468-68-R: KENNETH SENIOR 125 STIRTON STREET, HAMILTON, ONTARIO (APPLICANT) v. INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. ON BEHALF OF LOCAL UNION #14873 (RESPONDENT) v. M & T PRODUCTS OF CANADA LIMITED (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF M & T PRODUCTS OF CANADA LIMITED AT ITS HAMILTON PLANT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (32 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	29
NUMBER OF PERSONS WHO CAST BALLOTS	29
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	9
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	19

15599-68-R: RAYMOND ALEXANDER (APPLICANT) v. LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL #597, FORMERLY KNOWN AS THE INTERNATIONAL HOD CARRIERS, BUILDING AND COMMON LABOURERS UNION OF AMERICA, LOCAL #597 (RESPONDENT) v. NADECO LIMITED (INTERVENER). (2 EMPLOYEES). (DISMISSED).

15600-68-R: CHARLES BLOOR (APPLICANT) v. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 1071 (RESPONDENT) v. NADECO LIMITED (INTERVENER). (2 EMPLOYEES). (DISMISSED).

15601-68-R: NEATE CONSTRUCTION LTD. (APPLICANT) v. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL 498 BRANTFORD ONTARIO (RESPONDENT). (2 EMPLOYEES). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1188).

15654-68-R: EMPLOYEES OF MODERN FOOTWEAR COMPANY (APPLICANTS) v. FUR, LEATHER, SHOE & ALLIED WORKERS' UNION (RESPONDENT). (31 EMPLOYEES). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1190).

15669-68-R: KENNETH BELL, EDGAR MOULTON LESLIE KESKENY AND OTHERS (APPLICANTS) v. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (RESPONDENT) v. CANADIAN MOULDINGS LIMITED (INTERVENER). (60 EMPLOYEES). (GRANTED).

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

FEBRUARY

15557-68-R: LUMBER & SAWMILL WORKERS UNION, LOCAL 2693, OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) v. THE ONTARIO-MINNESOTA PULP & PAPER COMPANY LIMITED (RESPONDENT) v. LUMBER & SAWMILL WORKERS UNION, LOCAL 2807 OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (PREDECESSOR TRADE UNION). (GRANTED).

15563-68-R: UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION (APPLICANT) v. ST. MARY'S CEMENT COMPANY LIMITED (RESPONDENT) v. ST. MARY'S CEMENT WORKERS' UNION, LOCAL 268, C.L.C. (PREDECESSOR TRADE UNION). (GRANTED).

APPLICATION FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

FEBRUARY

15723-68-U: H. F. HEINZ COMPANY OF CANADA, LIMITED (APPLICANT) v. THOSE PERSONS NAMED IN SCHEDULES "A" & "B" ATTACHED HERETO (RESPONDENTS). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING

FEBRUARY

15182-68-U: LOCAL UNION 46 - UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (COMPLAINANT) v. SENTINEL HEATING SERVICES LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1193).

15289-68-U: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) v. MURRAY BROS. LUMBER CO. LTD. (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 1194).

15309-68-U: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (COMPLAINANT) v. ITT CANADA LTD. (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1199).

15512-68-U: GENERAL TRUCK DRIVERS LOCAL UNION 879 (COMPLAINANT) v. ROTHSAY CONCENTRATES LIMITED (RESPONDENT). (WITHDRAWN).

15572-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. R. REININGER & SON LIMITED (RESPONDENT). (WITHDRAWN).

15580-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. S. E. WOODS-HOLDEN LTD., TRAILER DIVISION (RESPONDENT). (WITHDRAWN).

15581-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. S. E. WOODS-HOLDEN LTD., TRAILER DIVISION (RESPONDENT). (WITHDRAWN).

15582-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. S. E. WOODS-HOLDEN LTD., TRAILER DIVISION (RESPONDENT). (WITHDRAWN).

15587-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. R. REININGER & SON LIMITED (RESPONDENT). (WITHDRAWN).

15593-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. S. E. WOODS-HOLDEN LTD., TRAILER DIVISION (RESPONDENT). (WITHDRAWN).

15641-68-U: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) v. GREEN-VALE DAIRIES LIMITED (RESPONDENT). (WITHDRAWN).

15642-68-U: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) v. GREEN-VALE DAIRIES LIMITED (RESPONDENT). (WITHDRAWN).

15697-68-U: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, A.F.L.-C.I.O.-C.L.C. LOCAL 197 (COMPLAINANT) v. PETER MELNYK LIMITED (RESPONDENT). (WITHDRAWN).

APPLICATION FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

15608-68-M: THE FRENCH IVORY PRODUCTS LIMITED, AND UNITED RUBBER, CORK LINOLEUM & PLASTIC WORKERS OF AMERICA, LOCAL 590 (APPLICANTS). (GRANTED).

APPLICATIONS UNDER SECTION 47A DISPOSED OF DURING

FEBRUARY

15281-68-M: THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (U.A.W.-A.F.L.-C.I.O.) AND LOCAL 252 OF THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (U.A.W.-A.F.L.-C.I.O.) (APPLICANTS) v. CANADIAN TRAILMOBILE LIMITED; BRANTFORD TRAILER & BODY LIMITED; INTERNATIONAL MOLDERS AND ALLIED WORKERS' UNION THROUGH ITS LOCAL 28 (RESPONDENTS). (GRANTED).

UNIT: "ALL EMPLOYEES OF TRAILMOBILE AT ITS SALES AND SERVICE BRANCH IN REXDALE SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	33
NUMBER OF PERSONS WHO CAST BALLOTS	33
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANTS	15
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT INTERNATIONAL MOLDERS AND ALLIED WORKERS' UNION THROUGH ITS LOCAL 28	18

15531-68-M: THE CORPORATION OF THE TOWNSHIP OF CALVERT (APPLICANT) v. TOWN OF IROQUOIS FALLS; ABITIBI PAPER COMPANY LIMITED; INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS, LOCAL 90; CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 259, C.L.C. (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 1208).

APPLICATION FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING

FEBRUARY

14343-67-M: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CLC) AND ITS LOCAL 673 (APPLICANT) v. DOUGLAS AIRCRAFT COMPANY OF CANADA LIMITED (RESPONDENT). (WITHDRAWN).

REFERENCE TO BOARD PURSUANT TO SECTION 79A

15509-68-M: RETAIL, WHOLESALE, HOTEL AND RESTAURANT EMPLOYEES UNION LOCAL 448, A.F. OF L., C.I.O.-C.C.L., CHARTERED BY THE INTERNATIONAL RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, A.F. OF L., C.I.O. C.C.L. (TRADE UNION) v. RED LION INN (LONDON) LIMITED (EMPLOYER). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 1211).

15597-68-M: HOTEL, MOTEL AND RESTAURANT EMPLOYEES' UNION, LOCAL 899 A.F.L.-C.I.O.-C.L.C. (TRADE UNION) v. KING GEORGE RESTAURANT (REGISTERED) (EMPLOYER). GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 1213).

15612-68-M: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (TRADE UNION) v. D. & D. CONTRACTORS (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 1215).

JURISDICTIONAL DISPUTES

14743(A)-68-JD: FRASER-BRACE ENGINEERING COMPANY, LIMITED (COMPLAINANT) v. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486, AND LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION 493 (RESPONDENTS). (REQUEST DENIED).

15614(A)-68-JD: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 2466 (COMPLAINANT) v. F. A. ACTON (RESPONDENT) v. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1988 (INTERVENER #1) v. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1410 (INTERVENER #2) v. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (INTERVENER #3). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1216).

15650(B)-68-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (APPLICANT) v. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

15304-68-R: OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) v. TRW ELECTRONIC COMPONENTS LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 1222).

15556-68-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1687 (APPLICANT) v. EVOY-MCLEAN LIMITED (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 1224).

15611-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. WIENER ELECTRIC LIMITED (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 1225).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 65

15558-68-U: LOCAL 800 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (COMPLAINANT) v. THE FOUNDATION COMPANY OF CANADA LIMITED AND A. D. ROSS AND COMPANY LIMITED (RESPONDENTS). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 1226).

INDEXED ENDORSEMENTS - CERTIFICATION

12984-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE GOVERNORS OF THE UNIVERSITY OF TORONTO (RESPONDENT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (INTERVENER #1) v. BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 204 (INTERVENER #2) v. LOCAL UNION 46, THE UNITED ASSOCIATION OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (INTERVENER #3) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG AND A. RISELEY FOR THE APPLICANT, P. GENEST, A. MALCOLM AND J. POWADIUK FOR THE RESPONDENT, NO ONE FOR INTERVENER #1, E. RENAUD FOR INTERVENER #2, NO ONE FOR INTERVENER #3, NO ONE FOR THE OBJECTORS.

DECISION OF THE BOARD: FEBRUARY 5, 1969.

• • •

2. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR ALL NON-PROFESSIONAL EMPLOYEES OF THE RESPONDENT EMPLOYED IN THOSE LIBRARIES THAT FALL WITHIN JURISDICTION OF THE UNIVERSITY OF TORONTO LIBRARY. THE RESPONDENT SUBMITS THAT THE APPROPRIATE BARGAINING UNIT IS ONE ENCOMPASSING ALL NON-ACADEMIC EMPLOYEES OF THE UNIVERSITY OF TORONTO IN METROPOLITAN TORONTO. BOTH THE APPLICANT AND THE RESPONDENT AGREE THAT SHOULD THE BOARD FIND LIBRARY EMPLOYEES, BY THEMSELVES, TO BE APPROPRIATE FOR COLLECTIVE BARGAINING, THE UNIT SHOULD BE CONFINED TO THE UNIT PROPOSED BY THE APPLICANT AND SHOULD NOT INCLUDE EMPLOYEES ENGAGED IN LIBRARY SERVICES IN OTHER PARTS OF THE UNIVERSITY NOT FALLING WITHIN THE JURISDICTION OF THE UNIVERSITY OF TORONTO LIBRARY.

3. THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT IN THIS MATTER. FOLLOWING MANY MEETINGS WITH THE PARTIES, THE EXAMINER SUBMITTED A REPORT TO THE BOARD TOGETHER WITH EXHIBITS. THE BOARD THEREUPON ENTERAINED THE SUBMISSIONS OF COUNSEL FOR THE APPLICANT AND COUNSEL FOR THE RESPONDENT SOLELY ON THE ISSUE OF THE APPROPRIATE BARGAINING UNIT. WE HAVE SUMMARISED BELOW WHAT WE CONSIDER TO BE THE RELEVANT EVIDENCE RELATING TO THE BARGAINING UNIT.

4. THE UNIVERSITY LIBRARY IS ONE OF APPROXIMATELY FORTY CONSTITUENT UNITS WHICH COMPOSE THE UNIVERSITY OF TORONTO. WHILE THESE UNITS ARE GENERALLY DESIGNATED AS FACULTIES, COLLEGES, SCHOOLS, INSTITUTES OR CENTRES, AS A MATTER OF CONVENIENCE WE WILL REFER TO THEM AS DEPARTMENTS. THE SENIOR ADMINISTRATIVE OFFICER OF THE UNIVERSITY LIBRARY IS THE CHIEF LIBRARIAN.

5. ALL OF THE DEPARTMENTS OF THE UNIVERSITY INCLUDING THE LIBRARY RECEIVE AN ANNUAL OPERATING BUDGET WITHIN WHICH THEY WORK. THE CHIEF LIBRARIAN STANDS IN THE SAME RELATIONSHIP TO THE PRESIDENT OF THE UNIVERSITY IN TERMS OF BUDGET AS THE DEANS AND DIRECTORS OF THE OTHER DEPARTMENTS OF THE UNIVERSITY. EACH OF THEM IS ULTIMATELY RESPONSIBLE, THROUGH THE PRESIDENT, TO THE BOARD OF GOVERNORS. THE CHIEF LIBRARIAN AND ALL OTHER DEPARTMENT HEADS ARE RESPONSIBLE TO THE PRESIDENT FOR DRAWING UP FINANCIAL ESTIMATES AND ADMINISTERING FUNDS APPROPRIATED BY THE BOARD OF GOVERNORS FOR SALARIES, BOOKS, SUPPLIES, ETC.

6. THE PERSONNEL DEPARTMENT HAS A DIRECTOR AND A STAFF OF APPROXIMATELY A DOZEN PERSONS, TWO OF WHOM ARE RECRUITERS. THE ROLE OF THE PERSONNEL DEPARTMENT IN ESTABLISHING DEPARTMENTAL BUDGETS IS LIMITED TO RECOMMENDING SALARY INCREASES. THE PERSONNEL DEPARTMENT IN MAKING ITS RECOMMENDATIONS WITH RESPECT TO SALARY ADJUSTMENTS MUST WORK WITHIN THE LIMITS OF THE MONEY APPROPRIATED FOR THIS PURPOSE BY THE BOARD OF GOVERNORS. THE DIRECTOR OF PERSONNEL ESTABLISHES SALARY RANGES FOR ALL NON-ACADEMIC STAFF THROUGHOUT THE UNIVERSITY, SUBJECT TO THE APPROVAL OF THE BOARD OF GOVERNORS. AN EXCEPTION IS THOSE EMPLOYEES WHO HAVE A TRADE UNION AS THEIR BARGAINING AGENT. NON-ACADEMIC STAFF INCLUDES ADMINISTRATIVE, TECHNICAL, CLERICAL AND OTHER MISCELLANEOUS PERSONNEL.

7. FOR EXISTING STAFF THERE IS A PROCEDURE FOR AN ANNUAL SALARY REVIEW. IT IS INITIATED BY THE PERSONNEL OFFICE WHICH SENDS OUT A MERIT RATING REVIEW FORM TO BE COMPLETED BY EACH DEPARTMENT HEAD AND HIS SENIOR STAFF. ON THE BASIS OF THE RETURNS MADE BY THE DEPARTMENT HEADS, THE PERSONNEL DEPARTMENT ESTABLISHES PROPOSED RATE INCREASES. IN GENERAL, THE RECOMMENDED INCREASES ARE CONCURRED IN BY THE DEPARTMENT HEADS ALTHOUGH ALTERATIONS ARE SOMETIMES MADE AS A RESULT OF NEGOTIATIONS. WITH REGARD TO NEW STAFF, THE DEPARTMENT HEADS DETERMINE THE NUMBER OF NEW POSITIONS THEY ANTICIPATE WILL BE REQUIRED AND THE QUALIFICATIONS NEEDED FOR THE POSITIONS. THE SALARIES ALLOCATED TO SUCH POSITIONS MUST BE CONSISTENT WITH THE RANGES ESTABLISHED BY THE PERSONNEL DEPARTMENT FOR THE WHOLE UNIVERSITY. IN THE CENTRAL LIBRARY THERE ARE FIVE CATEGORIES OF LIBRARY ASSISTANTS. WITHIN EACH CATEGORY PROVISION IS MADE FOR A STANDARD INCREASE. THIS AMOUNT MAY VARY, HOWEVER, ACCORDING TO THE MERIT RATING MADE BY THE CHIEF LIBRARIAN FOR THE INDIVIDUAL EMPLOYEES IN EACH CLASSIFICATION.

8. WITH REGARD TO HIRING, ACCORDING TO THE PROCEDURE THAT HAS BEEN LAID DOWN, THE PERSONNEL DEPARTMENT IS SUPPOSED TO RECRUIT AND SCREEN ALL APPLICANTS FOR NON-ACADEMIC POSITIONS THROUGHOUT THE UNIVERSITY. THE LIBRARY FOR ITS PART IS SUPPOSED TO ADVISE THE PERSONNEL OFFICE OF VACANCIES WHICH IT WISHES TO HAVE FILLED OR NEW STAFF REQUIREMENTS. THE PERSONNEL DEPARTMENT SECURES CANDIDATES THROUGH CANADA MAN-POWER, PERSONNEL AGENCIES, CLASSIFIED ADVERTISING AND "WALK-INS". IN

PRACTICE, HOWEVER, THE LIBRARY HAS ADVERTISED FOR STAFF ITSELF AND HAS DIRECTLY HIRED PERSONS WHO HAVE APPLIED AND AS WELL HAS DIRECTLY HIRED "WALK-INS". BETWEEN JANUARY 1ST, 1967 AND APRIL 20TH, 1967, OF 68 EMPLOYEES HIRED BY THE LIBRARY ONLY 24 WERE HIRED AS A RESULT OF REFERRALS FROM THE PERSONNEL OFFICE.

9. THE FINAL SELECTION OF STAFF, PROMOTION AND TRANSFER WITHIN THE LIBRARY, AND TERMINATIONS OF EMPLOYMENT REST WITH THE CHIEF LIBRARIAN. ALL HIRINGS, PROMOTIONS, TRANSFERS AND TERMINATIONS, HOWEVER, MUST BE REPORTED TO PERSONNEL FOR THEIR RECORDS. IN THE CASE OF PROMOTIONS, AVAILABLE POSITIONS ARE POSTED ON THE LIBRARY BULLETIN BOARDS AND THE LIBRARY MAKES THE SELECTION OF THE SUCCESSFUL CANDIDATE. ONLY IN SITUATIONS THAT ARE NOT STANDARD DOES THE CHIEF LIBRARIAN DISCUSS TERMINATIONS WITH THE PERSONNEL OFFICE.

10. THE PERSONNEL DEPARTMENT ENDEAVOURS TO MAINTAIN CONSISTENT POLICIES THROUGHOUT THE UNIVERSITY RELATING TO WORKING CONDITIONS. THE HOURS OF WORK ARE STANDARD THROUGHOUT THE UNIVERSITY AND ANY VARIATIONS, SUCH AS HOURS OF WORK BEYOND REGULAR HOURS, MUST RECEIVE THE APPROVAL OF THE PERSONNEL DEPARTMENT. IN THE CASE OF THE LIBRARY SPECIAL HOURS HAVE BEEN ARRANGED WITH THE APPROVAL OF THE LIBRARY COUNCIL AND A RECORD OF THESE HOURS IS FILED WITH THE PERSONNEL OFFICE. THE EXACT HOURS, WHETHER REGULAR OR OVERTIME, THAT EMPLOYEES ARE SCHEDULED TO WORK ARE DETERMINED BY THE LIBRARY. SICK LEAVE, LEAVES OF ABSENCE BEYOND THREE DAYS, AND COMPASSIONATE LEAVES MUST BE REFERRED TO PERSONNEL FOR APPROVAL. VACATIONS AND FRINGE BENEFITS ARE STANDARD THROUGHOUT THE UNIVERSITY. TRANSFERS BETWEEN DEPARTMENTS OF THE UNIVERSITY ARE RARE. WHEN THEY OCCUR, HOWEVER, THE EMPLOYEES CONCERNED MAINTAIN THEIR SENIORITY FOR ALL PURPOSES.

11. THE FUNCTION OF THE LIBRARY IS TO SERVE THE STAFF AND STUDENTS OF ALL PARTS OF THE UNIVERSITY. MORE PARTICULARLY, THE UNIVERSITY LIBRARY COLLECTS BOOKS AND OTHER PRINTED MATERIALS WHICH ARE NEEDED FOR STUDY AND RESEARCH, ORGANIZING THESE MATERIALS FOR USE, MAKING THEM AVAILABLE AND PROVIDING GUIDANCE IN THEIR USE. THE POLICIES GOVERNING THE USE OF ALL LIBRARY SERVICES WITHIN THE UNIVERSITY ARE GOVERNED BY THE LIBRARY COUNCIL OF WHICH THE PRESIDENT IS CHAIRMAN.

12. PHYSICALLY, THE MAIN BUILDING OF THE UNIVERSITY LIBRARY IS ON THE ST. GEORGE STREET CAMPUS. AT THE TIME THIS APPLICATION WAS MADE THERE WAS A SECOND BUILDING AT 215 HURON STREET. THE BOARD WAS ADVISED THAT SINCE THE DATE OF THE MAKING OF THE APPLICATION THE EMPLOYEES AT THE LATTER LOCATION HAD BEEN MOVED TO A BUILDING AT 175 BEDFORD ROAD WHICH IS IN AN AREA ADJACENT TO THE MAIN CAMPUS. THE NEW COLLEGE LIBRARY, THE LAIDLAW LIBRARY AT UNIVERSITY COLLEGE, THE LIBRARY AT SIDNEY SMITH HALL AND THE ENGINEERING LIBRARY IN THE GALBRAITH BUILDING, IN ADDITION TO THE MAIN BUILDING AND BEDFORD ROAD LOCATION, ALL FORM A PART OF THE UNIVERSITY LIBRARY UNDER THE CONTROL AND DIRECTION OF THE CHIEF LIBRARIAN. THERE ARE,

HOWEVER, SOME THIRTY OR FORTY LOCATIONS AROUND THE MAIN CAMPUS WHERE BOOKS BELONGING TO THE CENTRAL LIBRARY ARE LOCATED. LIBRARIES SUCH AS THE ONTARIO COLLEGE OF EDUCATION LIBRARY AND THE FEDERATED COLLEGE LIBRARIES, I.E., TRINITY COLLEGE, DO NOT FALL WITHIN THE PURVIEW OF THE CHIEF LIBRARIAN NOR DO THE LIBRARIES AT ERINDALE COLLEGE AND SCARBOROUGH COLLEGE.

13. THE ORGANIZATION OF THE UNIVERSITY LIBRARY UNDER THE CHIEF LIBRARIAN MAY BE DESCRIBED AS FOLLOWS. THERE ARE FOUR ASSISTANT LIBRARIANS, ONE FOR EACH OF THE AREAS OF (1) HUMANITIES AND SOCIAL SCIENCES, (2) SCIENCE AND MEDICINE, (3) TECHNICAL SERVICES, (4) BOOK SELECTION. THERE ARE A TOTAL OF SIXTEEN DEPARTMENTS OR DIVISIONS WITHIN THE LIBRARY, A NUMBER OF THEM FALLING UNDER THE JURISDICTION OF EACH OF THE ASSISTANT LIBRARIANS. THE TWO LARGEST DEPARTMENTS IN TERMS OF NUMBERS OF EMPLOYEES ARE CIRCULATION AND CATALOGUE.

14. THE VAST MAJORITY OF EMPLOYEES OF THE LIBRARY ARE INVOLVED DIRECTLY OR INDIRECTLY WITH BOOKS, THEIR PLACEMENT AND CATEGORIZATION. ALL OF THE NON-PROFESSIONAL LIBRARY EMPLOYEES ARE CALLED LIBRARY ASSISTANTS AND AS HAS BEEN MENTIONED THEY ARE GRADED FROM CLASS I UPWARDS TO CLASS V. SOME OF THESE EMPLOYEES ARE IN JOB CLASSIFICATIONS THAT ARE COMMON THROUGHOUT THE UNIVERSITY, I.E., CLERKS, TYPISTS, PROGRAMMERS, KEYPUNCH OPERATORS, MESSENGERS AND DRIVERS. OUT OF TOTAL OF APPROXIMATELY 370 PERSONS IN THESE CLASSIFICATIONS THROUGHOUT THE UNIVERSITY, SOME 150 ARE EMPLOYED BY THE UNIVERSITY LIBRARY. THERE ARE, HOWEVER, ABOUT 200 PERSONS EMPLOYED IN CLASSIFICATIONS THAT ARE FOUND ONLY IN LIBRARIES. STOCKMEN, SHELVERS, LABELLERS, RESTORERS, BOOKBINDERS, REVISERS, BIBLIOGRAPHERS, SEARCHERS AND CATALOGUERS ARE A REPRESENTATIVE SAMPLE OF SUCH CLASSIFICATIONS.

15. EMPLOYEES IN ALL CLASSIFICATIONS GENERALLY ACQUIRE THEIR TRAINING AND EXPERIENCE ON THE JOB. TYPING AND FILING JOBS ARE COMPARABLE IN COMPLEXITY TO SIMILAR JOBS IN OTHER DEPARTMENTS EXCEPT THAT THE DEGREE OF ACCURACY DEMANDED BY THE LIBRARY IS UNUSUALLY HIGH. THE LOWER CLASSIFICATIONS OF LIBRARY ASSISTANTS IN THE CIRCULATION DEPARTMENT DO NOT NECESSARILY NEED TO HAVE A KNOWLEDGE OF CATALOGUING IN ORDER TO DO THEIR WORK. TO BE COMPLETELY EFFICIENT, HOWEVER, PARTICULARLY IN THE HIGHER RANGES, IT IS VIRTUALLY NECESSARY FOR EMPLOYEES TO UNDERSTAND THE CATALOGUING SYSTEM. WE WOULD ADD THAT EVEN THE TYPE OF CLERICAL WORK PERFORMED IN THE CIRCULATION DEPARTMENT IS SIGNIFICANTLY DIFFERENT FROM ORDINARY CLERICAL WORK BECAUSE OF THE CATALOGUING SYSTEM. EMPLOYEES IN THE CATALOGUING DEPARTMENT, INCLUDING CLERICAL EMPLOYEES, GENERALLY SPEAKING, REQUIRE A FAIRLY HIGH DEGREE OF COMPREHENSION. EMPLOYEES IN CLASSIFICATIONS SUCH AS SEARCHERS AND CATALOGUERS REQUIRE CONSIDERABLE INTELLIGENCE AND TALENTS, OFTEN INCLUDING A KNOWLEDGE OF FOREIGN LANGUAGES.

16. WE ARE SATISFIED THAT IN MOST ESSENTIAL RESPECTS THE UNIVERSITY LIBRARY OPERATES AS A FUNCTIONALLY INDEPENDENT ENTITY. THE UNIVERSITY, THROUGH THE PERSONNEL DEPARTMENT, ESTABLISHES OVERALL SALARY RANGES AND WORKING CONDITIONS. THE CHIEF LIBRARIAN AND HIS SENIOR STAFF, HOWEVER, HAVE THE RESPONSIBILITY FOR PREPARING AND ADMINISTERING A SEPARATE BUDGET WITHIN THE FRAMEWORK LAID DOWN BY THE UNIVERSITY. THEY ALSO HAVE THE ULTIMATE AUTHORITY TO HIRE, PROMOTE, TRANSFER AND DISCHARGE THE LIBRARY'S EMPLOYEES. AS HAS BEEN MENTIONED, INTERCHANGE OF EMPLOYEES BETWEEN THE LIBRARY AND OTHER DEPARTMENTS OF THE UNIVERSITY IS A RARE OCCURRENCE.

17. WE ARE SATISFIED FURTHER THAT THE NATURE OF THE WORK PERFORMED BY LIBRARY EMPLOYEES GIVES THEM A COMMUNITY OF INTEREST WHICH MAKES THEM A RECOGNIZABLE COHESIVE GROUP. SOME OF THE JOB FUNCTIONS PERFORMED BY EMPLOYEES OF THE LIBRARY ARE SIMILAR TO THOSE PERFORMED IN OTHER DEPARTMENTS OF THE UNIVERSITY. THESE ARE LARGELY JOBS THAT CAN BEST BE DESCRIBED AS "OFFICE AND CLERICAL" AS THOSE WORDS ARE GENERALLY UNDERSTOOD. EVEN IN THESE JOBS THE LIBRARY EMPLOYEES ARE DISTINCTIVE BECAUSE OF THEIR INVOLVEMENT, DIRECTLY OR INDIRECTLY WITH BOOKS. THE GREATER NUMBER OF EMPLOYEES IN THE LIBRARY, HOWEVER, AND PARTICULARLY IN THE HIGHER JOB CLASSIFICATIONS, PERFORM DUTIES THAT ARE ASSOCIATED ONLY WITH LIBRARY SERVICES.

18. IT IS OUR CONCLUSION UPON A CONSIDERATION OF ALL THE EVIDENCE AND IN PARTICULAR, THE ABOVE FACTORS, THAT THE NON-ACADEMIC OR NON-PROFESSIONAL EMPLOYEES OF THE UNIVERSITY LIBRARY ARE AN APPROPRIATE UNIT FOR COLLECTIVE BARGAINING. IN ARRIVING AT THIS CONCLUSION WITH RESPECT TO THE EMPLOYEES OF THE LIBRARY, IT DOES NOT NECESSARILY FOLLOW THAT THE NON-ACADEMIC EMPLOYEES OF EACH DEPARTMENT OF THE UNIVERSITY, BY THEMSELVES, WOULD CONSTITUTE AN APPROPRIATE UNIT FOR COLLECTIVE BARGAINING.

19. MR. W. G. JACKSON, EXAMINER, ACCORDINGLY IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT.

14086-67-R: COMMUNICATIONS WORKERS OF AMERICA, AFL, CIO & CLC (APPLICANT) v. NORTHERN ELECTRIC COMPANY LIMITED (RESPONDENT) v. NORTHERN ELECTRIC EMPLOYEES ASSOCIATION (INTERVENOR #1) v. UNITED STEELWORKERS OF AMERICA (INTERVENOR #2).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: MARTIN LEVINSON AND B. MATHER FOR THE APPLICANT, JOHN P. SANDERSON, J. VAN DAHLMAN AND LLOYD WATT FOR THE RESPONDENT, IAN SCOTT, ALICK RYDER AND G. P. MEEHAN FOR INTERVENOR #1, LORNE INGLE, DOUG. RICHARDSON AND YVON THEORET FOR INTERVENOR #2.

DECISION OF THE BOARD:

FEBRUARY 11, 1969.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE APPLICANT APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR "ALL EMPLOYEES IN THE INSTALLATION AND OUTSIDE PLANT DEPARTMENTS OF THE RESPONDENT EMPLOYED IN THE PROVINCE OF ONTARIO EXCEPT THOSE FOR WHOM THE APPLICANT ALREADY HAS BARGAINING RIGHTS".
2. ONE OF THE BOARD'S EXAMINERS WAS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT AND MORE PARTICULARLY ON THE DUTIES, RESPONSIBILITIES AND COMMUNITY OF INTEREST OF PERSONS CLASSIFIED BY THE RESPONDENT AS INSTALLERS.
3. FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED NOVEMBER 6TH, 1968, AS AMENDED BY THE SUPPLEMENTARY REPORT OF THE EXAMINER DATED NOVEMBER 27TH, 1968, AND AS AGAIN AMENDED BY THE SUPPLEMENTARY REPORT OF THE EXAMINER DATED DECEMBER 13TH, 1968, THIS MATTER CAME ON FOR CONTINUATION OF HEARING ON JANUARY 29TH, 1969 TO AFFORD THE PARTIES AN OPPORTUNITY TO MAKE REPRESENTATIONS WITH RESPECT TO THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT AS AMENDED. AT THE HEARING ON JANUARY 29TH, 1969, WITH THE CONSENT OF THE PARTIES, ARGUMENT WAS CONFINED TO THE ISSUE OF THE BOARD'S JURISDICTION. ARGUMENT CONCERNING THE APPROPRIATENESS OF THE BARGAINING UNIT WAS POSTPONED PENDING A DECISION BY THE BOARD ON THE ISSUE OF JURISDICTION.
4. THE EXAMINER'S REPORT AS AMENDED IS COMPRISED OF MORE THAN 150 PAGES TO WHICH WAS EXHIBITED APPROXIMATELY 30 DOCUMENTS, PAMPHLETS, ETC. IT IS READILY APPARENT THAT THE PARTIES EXPENDED A GREAT AMOUNT OF TIME AND EFFORT IN PRESENTING THIS MATTER TO THE BOARD AND THE BOARD WISHES TO EXPRESS ITS APPRECIATION TO COUNSEL FOR THEIR THOROUGH TREATMENT OF ALL THE EVIDENCE AND THE RELEVANT LAW. HOWEVER, INrecognition of the fact that the board's decision on the question of jurisdiction must of necessity be empirical, the board will not assume the functions of a court by attempting an exhaustive and detailed treatment of the constitutional law which is involved in this matter. While the parties referred the board to the leading cases on the subject and while the board took this law into consideration before arriving at its decision, we will not attempt to distinguish each and every case or attempt to support all aspects of our decision by reference to and comparison with the learned decisions which are binding upon us. We are of opinion that no useful purpose would be served by such procedure and we recognize that nothing we say can confer jurisdiction on this board which it does not otherwise have. If we are wrong in our opinion with respect to our jurisdiction, the courts are quite capable of advising us of that fact if one of the parties chooses to invite the court to set our decision aside.

5. AMONG THE CASES RELIED UPON BY THE PARTIES AND WHICH THE BOARD CONSIDERED ARE THE FOLLOWING:

TORONTO v. BELL TELEPHONE CO. OF CANADA 1905 A.C. 52
IN THE MATTER OF LEGISLATIVE JURISDICTION OVER HOURS
OF LABOUR 1925 S.C.R. 505
IN RE THE REGULATION AND CONTROL OF AERONAUTICS IN
CANADA 1932 A.C. 54
IN RE REGULATION AND CONTROL OF RADIO COMMUNICATION
IN CANADA 1932 A.C. 304
A.G. FOR CANADA AND A.G. FOR ONTARIO ET AL 1937
A.C. 326
KONRAD JOHANNESSEN ET AL V. RURAL MUNICIPALITY WEST
ST. PAUL ET AL 1952 1 S.C.R. 292
CAMPBELL-BENNETT LTD. v. COMSTOCK MIDWESTERN LTD. AND
TRANS MOUNTAIN PIPE LINE CO. 1954 3 D.L.R. 481
A. G. FOR ONTARIO ET AL AND ISRAEL WINNER ET AL 1954
A.C. 541
RE EASTERN CANADA STEVEDORING COMPANY LIMITED 1955
S.C.R. 529
PRONTO URANIUM MINES LTD. v. ONTARIO LABOUR RELATIONS
BOARD ET AL 1966 5 D.L.R. 2ND, 342
CANT v. CANADIAN BECHTEL LTD. 1958 12 D.L.R. 2ND, 215
UNDERWATER GAS DEVELOPERS LIMITED v. ONTARIO LABOUR
RELATIONS BOARD ET AL 1960 24 D.L.R. 2ND, 673
IN RE TANK TRUCK TRANSPORT LIMITED 1961 25 D.L.R. 2ND, 161
CANADIAN PACIFIC RAILWAY COMPANY v. A.G. FOR B.C. AND A.G.
FOR CANADA 1950 A.C. 122
THE QUEEN IN RIGHT OF ONTARIO v. BOARD OF TRANSPORT
COMMISSIONERS 65 D.L.R. (2d) 425
REGINA v. NOVA SCOTIA LABOUR RELATIONS BOARD, EX PARTE
J. B. PORTER CO. LTD. 68 D.L.R. (2d) 613
COMMISSION DU SALAIRE MINIMUM v. BELL TELEPHONE CO. OF
CANADA 59 D.L.R. (2d) 145
RE COLONIAL COACH LINES LTD. ET AL, AND ONTARIO HIGHWAY
TRANSPORT BOARD ET AL. [1967] 2 O.R. 25
REGINA v. ONTARIO LABOUR RELATIONS BOARD EX PARTE DUNN
39 D.L.R. (2d) 346

6. OUR CONSTITUTIONAL JURISDICTION TO ENTERTAIN THIS APPLICATION MUST BE FOUND IN THE RELEVANT PROVISIONS OF THE BRITISH NORTH AMERICA ACT, 1867 30-31 VICTORIA CHAPTER 3. THESE PROVISIONS READ AS FOLLOWS:

POWERS OF THE PARLIAMENT

91. IT SHALL BE LAWFUL FOR THE QUEEN, BY AND WITH THE ADVICE AND CONSENT OF THE SENATE AND HOUSE OF COMMONS, TO MAKE LAWS FOR THE PEACE,

ORDER, AND GOOD GOVERNMENT OF CANADA, IN RELATION TO ALL MATTERS NOT COMING WITHIN THE CLASSES OF SUBJECTS BY THIS ACT ASSIGNED EXCLUSIVELY TO THE LEGISLATURES OF THE PROVINCES; AND FOR GREATER CERTAINTY, BUT NOT SO AS TO RESTRICT THE GENERALITY OF THE FOREGOING TERMS OF THIS SECTION, IT IS HEREBY DECLARED THAT (NOTWITHSTANDING ANYTHING IN THIS ACT) THE EXCLUSIVE LEGISLATIVE AUTHORITY OF THE PARLIAMENT OF CANADA EXTENDS TO ALL MATTERS COMING WITHIN THE CLASSES OF SUBJECTS NEXT HEREINAFTER ENUMERATED; THAT IS TO SAY,--

1. THE AMENDMENT FROM TIME TO TIME OF THE CONSTITUTION OF CANADA, EXCEPT AS REGARDS MATTERS COMING WITHIN THE CLASSES OF SUBJECTS BY THIS ACT ASSIGNED EXCLUSIVELY TO THE LEGISLATURES OF THE PROVINCES, OR AS REGARDS RIGHTS OR PRIVILEGES BY THIS OR ANY OTHER CONSTITUTIONAL ACT GRANTED OR SECURED TO THE LEGISLATURE OR THE GOVERNMENT OF A PROVINCE, OR TO ANY CLASS OF PERSONS WITH RESPECT TO SCHOOLS OR AS REGARDS THE USE OF THE ENGLISH OR THE FRENCH LANGUAGE OR AS REGARDS THE REQUIREMENTS THAT THERE SHALL BE A SESSION OF THE PARLIAMENT OF CANADA AT LEAST ONCE EACH YEAR, AND THAT NO HOUSE OF COMMONS SHALL CONTINUE FOR MORE THAN FIVE YEARS FROM THE DAY OF THE RETURN OF THE WRITS FOR CHOOSING THE HOUSE: PROVIDED, HOWEVER, THAT A HOUSE OF COMMONS MAY IN TIME OF REAL OR APPREHENDED WAR, INVASION OR INSURRECTION BE CONTINUED BY THE PARLIAMENT OF CANADA IF SUCH CONTINUATION IS NOT OPPOSED BY THE VOTES OF MORE THAN ONE-THIRD OF THE MEMBERS OF SUCH HOUSE.
- 1A. THE PUBLIC DEBT AND PROPERTY.
2. THE REGULATION OF TRADE AND COMMERCE.
- 2A UNEMPLOYMENT INSURANCE.
3. THE RAISING OF MONEY BY ANY MODE OR SYSTEM OF TAXATION.
4. THE BORROWING OF MONEY ON THE PUBLIC CREDIT.
5. POSTAL SERVICE.
6. THE CENSUS AND STATISTICS.
7. MILITIA, MILITARY AND NAVAL SERVICE, AND DEFENCE.
8. THE FIXING OF AND PROVIDING FOR THE SALARIES AND ALLOWANCES OF CIVIL AND OTHER OFFICERS OF THE GOVERNMENT OF CANADA.
9. BEACONS, BUOYS, LIGHTHOUSES, AND SABLE ISLAND.
10. NAVIGATION AND SHIPPING.
11. QUARANTINE AND THE ESTABLISHMENT AND MAINTENANCE OF MARINE HOSPITALS.
12. SEA COAST AND INLAND FISHERIES.
13. FERRIES BETWEEN A PROVINCE AND ANY BRITISH OR FOREIGN COUNTRY OR BETWEEN TWO PROVINCES.
14. CURRENCY AND COINAGE.

15. BANKING, INCORPORATION OF BANKS, AND THE ISSUE OF PAPER MONEY.
16. SAVINGS BANKS.
17. WEIGHTS AND MEASURES.
18. BILLS OF EXCHANGE AND PROMISSORY NOTES.
19. INTEREST.
20. LEGAL TENDER.
21. BANKRUPTCY AND INSOLVENCY.
22. PATENTS OF INVENTION AND DISCOVERY.
23. COPYRIGHTS.
24. INDIANS AND LANDS RESERVED FOR THE INDIANS.
25. NATURALIZATION AND ALIENS.
26. MARRIAGE AND DIVORCE.
27. THE CRIMINAL LAW, EXCEPT THE CONSTITUTION OF COURTS OF CRIMINAL JURISDICTION, BUT INCLUDING THE PROCEDURE IN CRIMINAL MATTERS.
28. THE ESTABLISHMENT, MAINTENANCE, AND MANAGEMENT OF PENITENTIARIES.
29. SUCH CLASSES OF SUBJECTS AS ARE EXPRESSLY EXCEPTED IN THE ENUMERATION OF THE CLASSES OF SUBJECTS BY THIS ACT ASSIGNED EXCLUSIVELY TO THE LEGISLATURES OF THE PROVINCES.

AND ANY MATTER COMING WITHIN ANY OF THE CLASSES OF SUBJECTS ENUMERATED IN THIS SECTION SHALL NOT BE DEEMED TO COME WITHIN THE CLASS OF MATTERS OF A LOCAL OR PRIVATE NATURE COMPRISED IN THE ENUMERATION OF THE CLASSES OF SUBJECTS BY THIS ACT ASSIGNED EXCLUSIVELY TO THE LEGISLATURES OF THE PROVINCES.

EXCLUSIVE POWERS OF PROVINCIAL LEGISLATURES

92. IN EACH PROVINCE THE LEGISLATURE MAY EXCLUSIVELY MAKE LAWS IN RELATION TO MATTERS COMING WITHIN THE CLASSES OF SUBJECTS NEXT HEREINAFTER ENUMERATED; THAT IS TO SAY,--

10. LOCAL WORKS AND UNDERTAKINGS OTHER THAN SUCH AS ARE OF THE FOLLOWING CLASSES:--

- (a) LINES OF STEAM AND OTHER SHIPS, RAILWAYS, CANALS, TELEGRAPHS, AND OTHER WORKS AND UNDERTAKINGS CONNECTING THE PROVINCE WITH ANY OTHER OR OTHERS OF THE PROVINCES, OR EXTENDING BEYOND THE LIMITS OF THE PROVINCE;
- (b) LINES OF STEAM SHIPS BETWEEN THE PROVINCE AND ANY BRITISH OR FOREIGN COUNTRY;

(c) SUCH WORKS AS, ALTHOUGH WHOLLY SITUATE WITHIN THE PROVINCE, ARE BEFORE OR AFTER THEIR EXECUTION DECLARED BY THE PARLIAMENT OF CANADA TO BE FOR THE GENERAL ADVANTAGE OF CANADA OR FOR THE ADVANTAGE OF TWO OR MORE OF THE PROVINCES.

7. THE OBJECTS OF THE RESPONDENT COMPANY AS CONTAINED IN ITS LETTERS PATENT DATED JANUARY 5TH, 1914 ISSUED BY THE DEPARTMENT OF CONSUMER AND CORPORATE AFFAIRS FOR CANADA, AS AMENDED BY THE SUPPLEMENTARY LETTERS PATENT DATED MAY 31ST, 1915, INCLUDED THE RIGHT --

(A) TO MANUFACTURE AND DEAL IN EVERY KIND OF METAL, MACHINERY, APPARATUS AND DEVICE, AND THE APPURTENANCES OF THE SAME INCLUDING FOR THE SAKE OF PARTICULARITY BUT NOT SO AS TO LIMIT THE GENERALITY OF THE FOREGOING THE FOLLOWING, NAMELY: THOSE USED IN CONNECTION WITH THE BUSINESS OF TELEPHONE, TELEGRAPH, HEAT, LIGHT, POWER, CABLE, HYDRAULIC OR COMPRESSED AIR COMPANIES, OR THE BUSINESS OF MECHANICAL OR ELECTRICAL ENGINEERS OR MANUFACTURERS, AND TO CONSTRUCT OR CONTRACT FOR THE CONSTRUCTION FOR OTHERS OF ANY SUCH MACHINERY, APPARATUS AND DEVICES OR THEIR APPURTENANCES, AND FOR THE SAKE OF PARTICULARITY AS AFORESAID THOSE OF TELEPHONE, TELEGRAPH, LIGHT, POWER, HEAT, CABLE, HYDRAULIC OR COMPRESSED AIR LINES, PLANTS OR SYSTEMS AND APPLIANCES OR ARTICLES USED IN CONNECTION THEREWITH;

(C) TO ACQUIRE BY PURCHASE, CONCESSION, EXCHANGE, LEASE OR OTHER LEGAL TITLE TELEPHONE, TELEGRAPH, LIGHT, HEAT, POWER, STEAM, CABLE, HYDRAULIC OR COMPRESSED AIR PLANTS, WORKS, LINES OR APPARATUS OR ANY PORTION THEREOF FROM OTHER COMPANIES, PERSONS, FIRMS OR CORPORATIONS, AND TO ADVANCE MONEY TO OTHERS FOR THE PURPOSE OF BUILDING, ACQUIRING OR OPERATING SUCH PLANTS, WORKS, LINES OR APPARATUS OR ANY PORTION THEREOF; PROVIDED THAT THIS SECTION SHALL NOT BE DEEMED TO AUTHORIZE OR EMPOWER THE COMPANY TO CARRY ON THE BUSINESS OF A TELEGRAPH OR TELEPHONE COMPANY, OR TO CONSTRUCT AND WORK TELEGRAPH AND TELEPHONE LINES.

(EMPHASIS ADDED)

8. THE EMPLOYEES OF THE RESPONDENT CLASSIFIED AS INSTALLERS WITH WHOM WE ARE HERE CONCERNED PERFORM THEIR DUTIES FROM TIME TO TIME IN ONTARIO AND OTHER PROVINCES OF CANADA AND, ON OCCASION, IN OTHER COUNTIES. IF WE ELIMINATE ALL THE COMPLICATED AND VERY TECHNICAL ASPECTS OF THEIR DUTIES, THEIR WORK MAY BE DESCRIBED AS FOLLOWS.

THE INSTALLERS, AS THEIR CLASSIFICATION IMPLIES, INSTALL AND TEST EQUIPMENT MANUFACTURED OR PURCHASED BY THE RESPONDENT WHICH IS SOLD BY THE RESPONDENT TO ITS CUSTOMERS. "GENERALLY AN INSTALLER RECEIVES WHAT COULD BE TERMED EQUIPMENT, CONNECTS IT TOGETHER, TESTS IT OUT AND TURNS OVER A WORKING SYSTEM TO THE CUSTOMER". AFTER INSTALLATION SOME OF THE EQUIPMENT SOLD IS UTILIZED BY ITS CUSTOMERS, E.G., THE BELL TELEPHONE COMPANY OF CANADA, IN UNDERTAKINGS WHICH CLEARLY FALL WITHIN THE JURISDICTION OF THE PARLIAMENT OF CANADA. IN PERFORMING TESTS ON EQUIPMENT THAT IS INSTALLED, CERTAIN QUALIFIED INSTALLERS OCCASIONALLY MUST PERFORM WHAT IS KNOWN AS A SYSTEMS LINE-UP ACROSS PROVINCIAL BOUNDARIES. IN MAKING A SYSTEMS LINE-UP, AN INSTALLER LOCATED IN ONTARIO MUST COMMUNICATE OVER RADIO, LINE OR CABLE, DEPENDING ON THE SYSTEM INSTALLED, WITH OTHER INSTALLERS WHO MAY BE LOCATED ON OTHER PARTS OF THE SYSTEM IN OTHER PROVINCES. THE SYSTEMS LINE-UP IS MADE "TO ENSURE THAT THE SYSTEM MEETS ITS PERFORMANCE REQUIREMENTS AS OUTLINED IN THE SPECIFICATION REQUIREMENTS. CHECKS ARE MADE IN RESPECT OF LEVELS OF RECEPTION, CROSS TALK, NOISE, ETC.". THIS TYPE OF WORK WAS FIRST PERFORMED BY THE RESPONDENT IN THE 1960'S.

9. IT WOULD APPEAR THAT THE ONLY MAINTENANCE WORK THAT IS PERFORMED FOR CUSTOMERS IS ON EQUIPMENT THAT HAS BEEN SOLD FOR THE LOCAL AND INTERNAL USE OF THE CUSTOMERS, E.G., EQUIPMENT USED FOR COMMUNICATIONS WITHIN A BUILDING AS DISTINGUISHED FROM EQUIPMENT USED IN AN INTERPROVINCIAL UNDERTAKING.

10. IT APPEARS TO US THAT THE WORK WITH WHICH WE ARE HERE CONCERNED DOES NOT FALL WITHIN ANY OF THE ENUMERATED CLASSES OF SECTION 91 OF THE BRITISH NORTH AMERICA ACT WHICH ARE RESERVED TO THE PARLIAMENT OF CANADA. THE QUESTION TO WHICH WE MUST THEREFORE DIRECT OUR ATTENTION IS WHETHER THE PARLIAMENT OF CANADA HAS JURISDICTION OVER THIS WORK UNDER THE PROVISIONS OF SECTION 92.10 (A), (B) OR (C) OF THE BRITISH NORTH AMERICA ACT.

11. THERE CAN BE LITTLE DOUBT THAT IF THE WORK PERFORMED BY THE RESPONDENT'S EMPLOYEES ON EQUIPMENT SOLD TO THE BELL TELEPHONE COMPANY OF CANADA WAS IN FACT PERFORMED BY EMPLOYEES OF THE BELL TELEPHONE COMPANY OF CANADA, SUCH WORK WOULD BE PART OF THE BELL TELEPHONE COMPANY'S TOTAL UNDERTAKING AND WOULD FALL WITHIN FEDERAL RATHER THAN PROVINCIAL JURISDICTION. IF THE INSTALLERS WERE BELL TELEPHONE EMPLOYEES, THEIR WORK WOULD BE PERFORMED AS PART OF THE OPERATION OF THE BELL TELEPHONE SYSTEM WHICH IS AN UNDERTAKING "CONNECTING THE PROVINCE WITH ANY OTHER OR OTHERS OF THE PROVINCES, OR EXTENDING BEYOND THE LIMITS OF THE PROVINCE" AS CONTEMPLATED BY SECTION 92 (10) (A) OF THE BRITISH NORTH AMERICA ACT. (SEE TORONTO V. BELL TELEPHONE CO. OF CANADA CASE REFERRED TO ABOVE).

12. THE QUESTION FOR THIS BOARD TO DETERMINE, HOWEVER, IS WHETHER THE WORK PERFORMED BY THE INSTALLERS, AS OUTLINED ABOVE, WHEN PERFORMED AS EMPLOYEES OF THE RESPONDENT IN THE OPERATION OF THE RESPONDENT'S BUSINESS, FALLS WITHIN THE JURISDICTION OF THE PROVINCE AND IS WITHIN THE JURISDICTION OF THIS BOARD.

13. IT IS TO BE NOTED THAT THE RESPONDENT'S OBJECTS, AS QUOTED ABOVE, SPECIFICALLY PROVIDE THAT THE RESPONDENT'S OBJECTS "SHALL NOT BE DEEMED TO AUTHORIZE OR EMPOWER THE COMPANY TO CARRY ON THE BUSINESS OF A TELEGRAPH OR TELEPHONE COMPANY, OR TO CONSTRUCT AND WORK TELEGRAPH AND TELEPHONE LINES". IT MUST THEREFORE FOLLOW THAT IF THE RESPONDENT IS OPERATING WITHIN THE CONFINES OF ITS LETTERS PATENT OF INCORPORATION (AND THE RESPONDENT CANNOT BE HEARD TO ARGUE OTHERWISE) WHATEVER WORK IS PERFORMED BY THE RESPONDENT THROUGH ITS EMPLOYEES CANNOT BE CHARACTERIZED AS THE CARRYING ON OF "THE BUSINESS OF A TELEGRAPH OR TELEPHONE COMPANY". WHATEVER WORK IS DONE, WITH RESPECT TO THE INSTALLATION AND TESTING OF EQUIPMENT FOR THE TELEPHONE COMPANY, WHICH IS SUBSEQUENTLY USED BY THE TELEPHONE COMPANY, IS NOT WORK WHICH IS PART OF THE UNDERTAKING OF THE TELEPHONE COMPANY. THE WORK PERFORMED BY THE RESPONDENT'S EMPLOYEES IS PART OF THE UNDERTAKING OF THE RESPONDENT RATHER THAN PART OF THE UNDERTAKING OF THE RESPONDENT'S CUSTOMERS.

14. IT CANNOT BE SERIOUSLY ARGUED, AND INDEED IT WAS NOT ARGUED, THAT THE MANUFACTURE OF EQUIPMENT WHICH IS SUBSEQUENTLY USED BY A TELEPHONE COMPANY IS IN ITSELF PART OF THE OPERATION OF THE TELEPHONE SYSTEM. SIMILARLY, THE SALE AND DELIVERY OF SUCH EQUIPMENT TO THE TELEPHONE COMPANY IS NOT OR CANNOT BE CHARACTERIZED AS PART OF THE OPERATION OF THE TELEPHONE COMPANY. IN OUR VIEW, THE INSTALLATION AND TESTING OF EQUIPMENT SOLD TO THE TELEPHONE COMPANY IS MERELY EFFECTIVE DELIVERY OF THE EQUIPMENT SOLD AND IS REALLY AN INTEGRAL PART OF THE MANUFACTURE AND SALE PROCESS. BY SO STATING THE WORK OF THE INSTALLERS, WE DO NOT INTEND TO IN ANY WAY MINIMIZE THE HIGHLY TECHNICAL AND COMPLICATED PROCEDURES NECESSARY TO MAKE AND TEST THE INSTALLATIONS OR THE HIGH DEGREE OF SKILL REQUIRED TO PERFORM THESE DUTIES.

15. WHILE THE INSTALLERS USE THE EQUIPMENT TO MAKE CERTAIN TESTS IN THE PERFORMANCE OF THEIR DUTIES, THE INSTALLERS EMPLOYED BY THE RESPONDENT ARE AND REMAIN USERS OF THE SERVICES OPERATED BY THE TELEPHONE COMPANY. THEIR USE OF THE EQUIPMENT DOES NOT CAUSE THE RESPONDENT TO BE ENGAGED IN THE UNDERTAKING OR OPERATION OF A TELEPHONE SYSTEM ANY MORE THAN A TELEPHONE SUBSCRIBER WHO MAKES USE OF THE TELEPHONE INSTALLED IN HIS OFFICE OR HOME CAN BE PROPERLY SAID TO BE ENGAGED IN THE UNDERTAKING OF THE OPERATION OF THE TELEPHONE SYSTEM.

16. CAN IT REASONABLY BE SAID THAT THE INSTALLATION AND TESTING OF THE EQUIPMENT BY THE RESPONDENT'S INSTALLERS IS NECESSARILY INCIDENTAL TO OR PART AND PARCEL OF THE OPERATION OF THE TELEPHONE SYSTEM? WE THINK NOT. WHILE SUCH WORK MAY BE PRELIMINARY TO THE OPERATION OF A TELEPHONE SYSTEM, IN THE SAME MANNER AS THE MANUFACTURE OF WIRE IS ALSO PRELIMINARY, IT CANNOT BE PROPERLY CHARACTERIZED AS NECESSARILY INCIDENTAL TO THE OPERATION OF THE TELEPHONE SYSTEM.

17. SINCE IT IS RECOGNIZED THAT THE SYSTEM CANNOT FUNCTION UNTIL THE EQUIPMENT IS INSTALLED, BY THAT VERY FACT THE INSTALLATION OF EQUIPMENT BY THE RESPONDENT IS NOT AN INTEGRAL PART OF THE SYSTEM NOR IS IT PART AND PARCEL OF ACTIVITIES ESSENTIAL TO THE SYSTEM NOR IS IT NECESSARILY CONNECTED THEREWITH. THE TELEPHONE SYSTEM DOES NOT COME INTO EXISTENCE AS A SYSTEM UNTIL THE INSTALLATION IS COMPLETED.

18. THIS WORK IS READILY DISTINGUISHABLE FROM THE WORK PERFORMED BY THE STEVEDORES AS DESCRIBED IN THE EASTERN CANADA STEVEDORING COMPANY LIMITED CASE CITED ABOVE. IN THAT CASE, THE COURT FOUND THAT STEVEDORING, THE ACT OF LOADING AND REMOVAL OF CARGO FROM SHIPS, WAS PART AND PARCEL OF SHIPPING, WHICH FELL WITHIN FEDERAL JURISDICTION, PURSUANT TO THE PROVISIONS OF SECTION 91.10 OF THE BRITISH NORTH AMERICA ACT. IN THAT CASE, THE FACT THAT THE EMPLOYEES OF A SEPARATE COMPANY PERFORMED THE STEVEDORING FUNCTIONS WAS NOT JUST CAUSE FOR SEPARATING THE STEVEDORING FUNCTIONS FROM THE UNDERTAKING OF SHIPPING. THE LOADING OF A SHIP IS THE INITIAL STAGE AND THE UNLOADING OF A SHIP IS THE FINAL STAGE OF A SHIPPING OPERATION. IN THE INSTANT CASE, THE INSTALLATION OF ELECTRICAL EQUIPMENT IS NOT OF ITSELF A MATTER WHICH EXTENDS BEYOND THE LIMITS OF A PROVINCE AND THE FACT THAT THE INSTALLATION OF ELECTRICAL EQUIPMENT IS PERFORMED FOR A CUSTOMER WHOSE UNDERTAKING DOES EXTEND BEYOND THE LIMITS OF THE PROVINCE DOES NOT CHANGE THE INTRINSIC NATURE OF THE WORK PERFORMED BY THE RESPONDENT'S INSTALLERS. THE INTRINSIC NATURE OF THE WORK OF THE RESPONDENT'S INSTALLERS IS NOT ALTERED BECAUSE THE PLACE WHERE THE WORK IS PERFORMED MAY BE CHANGED. WE ARE CONCERNED HERE WITH THE NATURE OF THE WORK PERFORMED RATHER THAN THE PLACE WHERE IT IS PERFORMED. ALL WORK PERFORMED BY THE RESPONDENT'S INSTALLERS IS PERFORMED FOR AND ON BEHALF OF THE RESPONDENT. THERE IS NO EMPLOYMENT RELATIONSHIP BETWEEN THE INSTALLERS AND ANY OF THE RESPONDENT'S CUSTOMERS. THE RESPONDENT'S UNDERTAKING IS ESSENTIALLY LOCAL IN NATURE EVEN THOUGH ITS OPERATIONS ARE CARRIED ON IN EVERY PROVINCE. THE MANUFACTURING AND INSTALLATION OPERATIONS CARRIED ON BY THE RESPONDENT ARE SEPARATE AND DISTINCT FROM THE UNDERTAKING OF THE BELL TELEPHONE COMPANY, WHICH CARRIES ON THE BUSINESS OF OPERATING A TELEPHONE SYSTEM WHICH EXTENDS BEYOND THE LIMITS OF THE PROVINCE. AT NO TIME DOES THE RESPONDENT, THROUGH ITS EMPLOYEES, TAKE OVER THE OPERATION OF THE BELL TELEPHONE SYSTEM. INDEED, ITS CHARTER SPECIFICALLY PROHIBITS IT FROM DOING SO.

19. WHILE AN ONTARIO INSTALLER MAY HAVE TO RELY UPON THE PERFORMANCE OF AN INSTALLER LOCATED IN QUEBEC IN ORDER TO PROPERLY PERFORM A SYSTEMS LINE-UP, WE ARE OF OPINION THAT SUCH RELIANCE DOES NOT CHANGE THE NATURE OF HIS FUNCTIONS NOR IS SUCH RELIANCE ANY DIFFERENT IN NATURE THAN THE RELIANCE THAT A CHIEF BOOKKEEPER IN A SALES OPERATION MUST PLACE ON THE PERFORMANCE OF A JUNIOR BOOKKEEPER IN A SALES OFFICE LOCATED IN ANOTHER PROVINCE.

20. SIMILAR CONSIDERATIONS APPLY TO THE RELATIONSHIP OF THE RESPONDENT AND ITS INSTALLERS TO OTHER CUSTOMERS OF THE RESPONDENT IN THE RADIO, TELECOMMUNICATIONS, MICROWAVE AND OTHER RELATED FIELDS.

21. HAVING REGARD THEREFORE FOR ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, AND HAVING GIVEN EFFECT TO THE LAW TO WHICH REFERENCE HAS BEEN MADE AND FOR THE REASONS OUTLINED ABOVE, WE ARE OF OPINION THAT THE WORK OF THE RESPONDENT'S INSTALLERS, WHEN PERFORMED IN ONTARIO, FALLS WITHIN THE JURISDICTION OF THE PROVINCE OF ONTARIO AND IS NOT COVERED BY THE PROVISIONS OF SECTION 92.10 (A), (B) OR (C) OF THE BRITISH NORTH AMERICA ACT. WE ACCORDINGLY FIND THAT THE RESPONDENT'S INSTALLERS, WHEN EMPLOYED IN ONTARIO, ARE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSE OF THE LABOUR RELATIONS ACT AND WE THEREFORE ASSERT JURISDICTION WITH RESPECT TO THEM. OUR DECISION IN THIS MATTER APPEARS TO BE CONSISTENT WITH THE DECISIONS OF THE CANADA LABOUR RELATIONS BOARD IN THE CASE OF THE COMMUNICATIONS WORKERS OF AMERICA, LOCAL C-4 AND NORTHERN ELECTRIC COMPANY LIMITED AND NORTHERN ELECTRIC EMPLOYEE ASSOCIATION DATED JANUARY 23RD, 1958, AND AGAIN IN THE CASE OF RCA VICTOR EMPLOYEES' ASSOCIATION AND RCA VICTOR COMPANY, LTD. DATED OCTOBER 22ND, 1968.

22. THE REGISTRAR IS DIRECTED TO LIST THIS MATTER FOR CONTINUATION OF HEARING TO HEAR THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE COMPOSITION OF THE BARGAINING UNIT AND ALL OUTSTANDING ISSUES.

14235-67-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS AFL, CIO, CLC (APPLICANT) v. AUTOMATIC ELECTRIC (CANADA) LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFFE.

DECISION OF THE BOARD: FEBRUARY 5, 1969.

* * *

2. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT EMPLOYED AT BROCKVILLE. THE APPLICANT AND THE RESPONDENT ARE IN DISAGREEMENT AS TO THE APPROPRIATENESS OF THE INCLUSION IN OR EXCLUSION FROM THE PROPOSED BARGAINING UNIT OF A NUMBER OF CLASSIFICATIONS OF TECHNICIANS, TECHNOLOGISTS AND TOOL AND MACHINE DESIGNERS FILED STATEMENTS OF DESIRE WHEREIN THEY SUBMITTED THAT THEY WERE NOT APPROPRIATE FOR INCLUSION IN A BARGAINING UNIT OF OFFICE AND CLERICAL EMPLOYEES.

3. THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO AND REPORT ON THE COMPOSITION OF THE BARGAINING UNIT. A LENGTHY REPORT BY THE EXAMINER DATED NOVEMBER 1st, 1968 WAS SUBMITTED TO THE BOARD TOGETHER WITH EXHIBITS. THE BOARD THEREUPON ENTERAINED BOTH WRITTEN AND ORAL SUBMISSIONS BY ALL PARTIES HAVING AN INTEREST IN THIS PROCEEDING. BASED ON THE REPORT OF THE EXAMINER, THE MATERIAL FILED IN CONJUNCTION WITH THE REPORT AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD HAS DETERMINED THE BARGAINING UNIT WHICH IT CONSIDERS TO BE APPROPRIATE FOR COLLECTIVE BARGAINING. THE BOARD'S FINDINGS WITH RESPECT TO THE VARIOUS JOB CLASSIFICATIONS IN DISPUTE AND THE DESCRIPTION OF THE BARGAINING UNIT ARE SET OUT BELOW.

4. THE RESPONDENT DEFINES A TECHNOLOGIST AS A PERSON WHO HAS ACQUIRED A DIPLOMA IN TECHNOLOGY FROM AN INSTITUTE OF TECHNOLOGY RECOGNIZED BY THE ASSOCIATION OF PROFESSIONAL ENGINEERS OF THE PROVINCE OF ONTARIO OR WHO HOLDS A HIGHER NATIONAL CERTIFICATE (U.K.). A TECHNOLOGIST, HOWEVER, IS NOT NECESSARILY EMPLOYED IN A TECHNICAL CAPACITY NOR DOES A TECHNOLOGIST NECESSARILY HAVE TRAINING OF A TECHNICAL NATURE. FOR INSTANCE, SOME TECHNOLOGISTS GRADUATE FROM AN INSTITUTE OF TECHNOLOGY OR EQUIVALENT INSTITUTION IN BUSINESS ADMINISTRATION. IN OTHER WORDS, A TECHNOLOGIST MAY PERFORM WORK OF A TECHNICAL, SCIENTIFIC OR BUSINESS NATURE. WITH REGARD TO THE RESPONDENT'S OPERATIONS, THE WORK OF THE TECHNOLOGISTS FALLS INTO TWO CATEGORIES, THE MAJOR ONE BEING ENGINEERING AND THE OTHER BEING ADMINISTRATIVE. THE RESPONDENT HAS NO FORMAL DEFINITION FOR ENGINEERING TECHNICIANS. THE TERM IS A MATTER OF PRACTICE APPLIED TO PERSONS EMPLOYED IN CERTAIN JOBS WHICH REQUIRED SPECIALIZED KNOWLEDGE IN ENGINEERING AND RELATED FIELDS. THE FUNCTIONS OF TOOL AND MACHINE DESIGNERS ARE TO DESIGN ALL TOOLING REQUIRED, SUBMIT TOOLING COSTS ON NEW PROJECTS AND LOOK AFTER ANY TOOLING PROBLEMS ARISING IN THE PRODUCTION AREA.

5. ALL OF THE TOOL AND MACHINE DESIGNERS WORK IN THE TOOL AND MACHINE DESIGN SECTION OF THE RESPONDENT'S INDUSTRIAL ENGINEERING DEPARTMENT. THEIR WORK, WHILE SPECIALIZED IN NATURE, IS DONE IN CONJUNCTION WITH OTHER SECTIONS OF THE INDUSTRIAL ENGINEERING DEPARTMENT AND WITH SECTIONS OF OTHER DEPARTMENTS. MORE PARTICULARLY,

THEIR WORK IS RELATED TO THE PROCESS ENGINEERING SECTION OF THE INDUSTRIAL ENGINEERING DEPARTMENT AND THE QUALITY CONTROL AND INSPECTION SECTION OF THE ENGINEERING DEPARTMENT. THE TOOL AND MACHINE DESIGNERS ALSO HAVE LIASON WITH THE PURCHASING DEPARTMENT. THE STANDARDS SECTION IS ALSO IN THE INDUSTRIAL ENGINEERING DEPARTMENT. WITH THE EXCEPTION OF A CLERK TYPIST, THIS SECTION IS MADE UP ENTIRELY OF TECHNICIANS. THE FUNCTION OF THIS SECTION IS LARGEMLY MECHANICAL IN NATURE. THE PERSONNEL OF A NUMBER OF SECTIONS OF THE INDUSTRIAL ENGINEERING DEPARTMENT, SUCH AS THE ELECTRO-MECHANICAL PROCESS SECTION AND THE ELECTRONIC PROCESS, IS COMPOSED OF BOTH TECHNICIANS AND TECHNOLOGISTS. THIS INTEGRATION OF THE TWO CLASSIFICATIONS IS MOST PRONOUNCED IN THE ENGINEERING DEPARTMENT. MORE SPECIFICALLY, THE SECTIONS OF QUALITY CONTROL, RESEARCH AND DEVELOPMENT, WIRING AND DRAWING CONTROL, MECHANICAL DESIGN, RELAY SWITCHES AND SHELVES, EQUIPMENT PROPOSALS, EXCHANGE ENGINEERING AND CIRCUIT STANDARDS, WHICH WE WOULD ADD IS NOT A COMPLETE LIST, ARE COMPOSED OF ENGINEERING TECHNICIANS AND TECHNOLOGISTS. THEIR WORK, MOREOVER, IS SIMILAR IN NATURE, ALTHOUGH THE TECHNOLOGISTS PERFORM THOSE FUNCTIONS REQUIRING GREATER SKILLS. WE WOULD MENTION THAT THERE ARE OTHER JOB CLASSIFICATIONS WHICH ARE TECHNICAL IN NATURE IN THE ENGINEERING DEPARTMENT SUCH AS THE VERIFIERS IN THE QUALITY CONTROL SECTION AND ANALYSTS IN THE WIRING AND DRAWING CONTROL SECTION. WE WOULD POINT OUT ALSO THAT TECHNOLOGISTS AND TECHNICIANS ARE NOT JUST CONFINED TO THE ENGINEERING AND INDUSTRIAL ENGINEERING DEPARTMENTS BUT ARE TO BE FOUND ALSO, IN SMALLER NUMBERS, IN THE PRODUCTION DEPARTMENT AND ELSEWHERE IN THE RESPONDENT'S OPERATIONS. THERE IS A HIGH DEGREE OF MOBILITY BOTH HORIZONTAL AND VERTICAL AMONG THE TECHNICIANS IN THE RESPONDENT'S PLANT, PARTICULARLY IN THE ENGINEERING DEPARTMENT. SOME EMPLOYEES, MOREOVER, HAVE BEEN PROMOTED INTO THE TECHNICIAN CLASSIFICATION FROM OTHER CLASSIFICATIONS SUCH AS DRAFTSMEN. THERE IS ALSO MOBILITY OF EMPLOYMENT AMONG THE TECHNOLOGIST GROUP IN THE PLANT. OFFICE AND CLERICAL EMPLOYEES ARE INTERSPERSED THROUGHOUT THE SECTIONS OF THE RESPONDENT'S OPERATIONS WHERE THE TECHNICIANS AND TECHNOLOGISTS ARE LOCATED.

6. ATTACHED TO THE ENGINEERING DEPARTMENT IS FIELD SERVICE PERSONNEL WHICH ENCOMPASSES THE INSTALLATION SECTION. THE LATTER SECTION IS COMPOSED OF APPROXIMATELY NINETY INSTALLERS WHOSE JOB IT IS TO INSTALL EQUIPMENT, MAINLY FOR COMMUNICATIONS, WHICH IS MANUFACTURED IN THE RESPONDENT'S BROCKVILLE PLANT. THE INSTALLERS ARE TRAINED AT THE BROCKVILLE PLANT FOR THE PARTICULAR INSTALLATION JOB TO WHICH THEY ARE TO BE ASSIGNED AND THEN ARE SENT TO THE PREMISES OF THE CUSTOMER ANYWHERE IN CANADA (EXCEPT BRITISH COLUMBIA AND ALBERTA) FOR LENGTHY PERIODS OF TIME TO DO THE REQUIRED INSTALLATION WORK. GENERALLY, THEY ONLY RETURN TO BROCKVILLE TO RECEIVE TRAINING FOR THE NEXT INSTALLATION JOB. OCCASIONALLY,

TECHNICIANS FROM THE BROCKVILLE PLANT HAVE BEEN TEMPORARILY ASSIGNED TO PERFORM FIELD WORK WITH THE INSTALLERS. ALSO, THERE ARE SOMETIMES PERMANENT TRANSFERS OF FIELD INSTALLERS TO THE RANKS OF THE IN-PLANT TECHNICIANS. OTHER THAN THE INSTALLERS, THERE ARE A NUMBER OF TECHNOLOGISTS AND GRADUATE ENGINEERS ENGAGED IN THE RESPONDENT'S FIELD SERVICES. THE FIELD PERSONNEL OF NECESSITY OPERATES WITH A MINIMUM OF SUPERVISION. THERE IS, HOWEVER, CONTINUAL COMMUNICATION BETWEEN THOSE EMPLOYEES PRODUCING THE EQUIPMENT IN THE PLANT AND THOSE INSTALLING IT FOR CUSTOMERS IN THE FIELD.

7. THE RESPONDENT HAS A JOB EVALUATION PROGRAM WHICH IS APPLICABLE TO ALL OF ITS SALARIED EMPLOYEES, WHICH ARE THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED. BY THIS PROGRAM THE RESPONDENT ESTABLISHES THE REMUNERATION FOR ALL JOBS PERFORMED BY ITS SALARIED NON-SUPERVISORY PERSONNEL. THIS PROGRAM, HOWEVER, DOES NOT EXTEND TO GRADUATE ENGINEERS AND TECHNOLOGISTS. THE REASON WHY IT HAS NOT BEEN APPLIED TO THE TECHNOLOGISTS IS THAT IN ORDER TO SECURE THE SERVICES OF QUALIFIED TECHNOLOGISTS IT HAS BEEN NECESSARY FOR THE RESPONDENT TO ADJUST THE SALARIES FOR THIS GROUP ACCORDING TO THE SUPPLY AND DEMAND OF THE MARKET. ALL NON-SUPERVISORY PERSONNEL, INCLUDING THE TECHNOLOGISTS, RECEIVE THE SAME EMPLOYMENT BENEFITS FROM THE RESPONDENT, I.E. PENSION, GROUP LIFE INSURANCE, MEDICAL AND HOSPITAL INSURANCE. THESE BENEFITS COVER THE FIELD SERVICE PERSONNEL. WITH THE EXCEPTION OF THE LATTER GROUP, ALL SALARIED EMPLOYEES WORK DIRECTLY UNDER A COMMON SUPERVISORY HIERARCHY.

8. IN SUMMARY, WHILE HIGHER EDUCATIONAL QUALIFICATIONS ARE REQUIRED OF TECHNOLOGISTS THAN TECHNICIANS AND THE METHOD OF ESTABLISHING THE SALARIES OF THE FORMER CLASSIFICATION IS DIFFERENT FROM THE EVALUATION PROGRAM APPLIED IN DETERMINING THE SALARIES OF ALL OTHER CLASSIFICATIONS, THE WORK PERFORMED BY THE TECHNOLOGISTS AND TECHNICIANS IS SUFFICIENTLY SIMILAR IN NATURE AND SO INTEGRATED THAT THEY MUST BE CONSIDERED AS A SINGLE GROUP. WE FIND NO REASON, MOREOVER, TO TREAT THE TOOL AND MACHINE DESIGNERS ANY DIFFERENTLY THAN THE TECHNOLOGISTS AND TECHNICIANS. BOTH TECHNOLOGISTS AND TECHNICIANS WORK IN A LARGE NUMBER OF SECTIONS OF THE MAJOR DEPARTMENTS OF THE RESPONDENT'S OPERATIONS AND ARE HIGHLY MOBILE WITHIN THOSE SECTIONS AND DEPARTMENTS. THERE ARE AS WELL SOME EMPLOYEES, WHILE NOT CLASSIFIED AS TECHNICIANS, WHO WORK WITH AND PERFORM FUNCTIONS AKIN TO THOSE OF TECHNICIANS. MOREOVER, EMPLOYEES IN NON-TECHNICAL POSITIONS ARE SOMETIMES PROMOTED INTO THE TECHNICIAN CLASSIFICATION. FURTHER, CLERICAL EMPLOYEES WORK WITH TECHNICAL EMPLOYEES THROUGHOUT THE RESPONDENT'S OPERATIONS AND ALL OF THE EMPLOYEES ARE SUPERVISED BY A COMMON MANAGEMENT. HAVING REGARD TO ALL OF THE ABOVE CONSIDERATIONS, IT IS OUR CONCLUSION THAT THE OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT HAVE A COMMUNITY OF INTEREST WHICH MAKES THEM APPROPRIATE FOR COLLECTIVE BARGAINING IN A SINGLE UNIT.

9. AN EXCEPTION IS THE FIELD SERVICE PERSONNEL, WHICH INCLUDES THE INSTALLERS. WHILE THE INSTALLERS HAVE A CLOSE LIASON WITH THE IN-PLANT TECHNICIANS AND TECHNOLOGISTS, THE ACTUAL FUNCTIONS WHICH THEY PERFORM ARE PECULIAR TO THAT GROUP. MOREOVER, THERE IS LITTLE INTERCHANGE BETWEEN THE INSTALLERS AND TECHNICIANS GROUPS. FURTHER, THE CONDITIONS UNDER WHICH THE INSTALLERS WORK IN THE FIELD OF NECESSITY ARE DISTINCTLY DIFFERENT FROM THOSE OF THE PLANT EMPLOYEES. EVEN DURING THE SHORT PERIODS WHEN FIELD SERVICE PERSONNEL ARE EMPLOYED AT THE RESPONDENT'S OPERATIONS AT BROCKVILLE THEY ARE TREATED AS A GROUP APART. WE ACCORDINGLY FIND THAT THE FIELD SERVICE PERSONNEL ARE NOT APPROPRIATE FOR INCLUSION IN A UNIT WITH THE OFFICE, CLERICAL AND OTHER TECHNICAL EMPLOYEES.

10. THE BOARD ACCORDINGLY FINDS THAT ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT BROCKVILLE, SAVE AND EXCEPT ASSISTANT FOREMEN AND ASSISTANT SUPERVISORS, PERSONS ABOVE THE RANKS OF ASSISTANT FOREMAN AND ASSISTANT SUPERVISOR, FIELD SERVICE PERSONNEL, SPECIALISTS, PURCHASING AGENTS, SALESMEN AND SALES REPRESENTATIVES, NURSES AND NURSES' ASSISTANTS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, STUDENTS HIRED ON A COOPERATIVE TRAINING BASIS WITH SCHOOLS AND UNIVERSITIES, AND TRAINEES ON A GRADUATE TRAINING PROGRAM, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

11. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE EMPLOYEES IN THE METHODS TIME STUDY SECTION OF THE INDUSTRIAL ENGINEERING DEPARTMENT ARE NOT INCLUDED IN THE BARGAINING UNIT.

12. THE BOARD DECLARES (AND THE APPLICANT AND THE RESPONDENT AGREE) THAT THE EMPLOYEES IN THE STANDARDS SECTION OF THE INDUSTRIAL ENGINEERING DEPARTMENT ARE INCLUDED IN THE BARGAINING UNIT.

13. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT E. M. DOUGLAS, L. E. GREER, C. E. PIPHER, F. V. WELLS WHO ARE CLASSIFIED AS SECRETARIES; M. A. DORAN, M. FRASER, J. P. HERBISON, J. A. JONES, B. F. SERSON, N. WHYTE WHO ARE CLASSIFIED AS STENOGRAPHERS; R. J. BECKSTEAD, S. E. BURNS, A. B. KERR AND D. L. ROBERT WHO ARE CLASSIFIED AS ACCOUNTING AND PAYROLL CLERKS; W. A. TERMORSHUIZEN WHO IS CLASSIFIED AS A FINANCIAL ANALYST, AND W. R. CONNELL WHO IS CLASSIFIED AS A BUDGET COORDINATOR, ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND ARE NOT INCLUDED IN THE BARGAINING UNIT.

14. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT M. H. MALANKA WHO IS HEAD OF THE TYPING POOL IN THE FINANCIAL SECTION OF THE ADMINISTRATION DEPARTMENT EXERCISES BOTH MANAGERIAL FUNCTIONS AND IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND IS NOT INCLUDED IN THE BARGAINING UNIT.

15. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT GRADUATE ENGINEERS ARE NOT INCLUDED IN THE BARGAINING UNIT.

16. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT EMPLOYEES IN THE INDUSTRIAL RELATIONS DEPARTMENT, WITH THE EXCEPTION OF INSTRUCTORS IN THE TRAINING SECTION, ARE NOT INCLUDED IN THE BARGAINING UNIT.

17. THE BOARD DECLARES THAT A. R. DRAKE, K. A. SLOBOGAN AND G. GORDON WHO ARE INSTRUCTORS IN THE TRAINING SECTION EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE NOT INCLUDED IN THE BARGAINING UNIT.

18. FOR PURPOSES OF CLARITY, THE BOARD DECLARES THAT THE EMPLOYEES OF THE QUALITY CONTROL SECTION (STANDARDS AND TEST EQUIPMENT), THE RESEARCH AND DEVELOPMENT SECTION, THE EQUIPMENT ENGINEERING SECTION AND THE EQUIPMENT PROPOSALS SECTION OF THE ENGINEERING DEPARTMENT ARE INCLUDED IN THE BARGAINING UNIT.

19. THE BOARD DECLARES, HAVING REGARD TO THE NATURE OF THE MATERIAL WITH WHICH THEY DEAL, THAT P. B. MARKELL AND S. A. McMILLAN WHO ARE CLASSIFIED AS AUXILIARY MACHINE OPERATORS ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND ARE NOT INCLUDED IN THE BARGAINING UNIT.

20. THE BOARD DECLARES, BECAUSE OF THE LIMITATIONS ON HIS AUTHORITY, THAT G. E. BARKLEY WHO IS CLASSIFIED AS A BUYER DOES NOT EXERCISE MANAGERIAL AUTHORITY WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS INCLUDED IN THE BARGAINING UNIT.

21. THE RESPONDENT HAS FILED A LIST OF EMPLOYEES, 406 OF WHOM THE BOARD FINDS ARE INCLUDED IN THE BARGAINING UNIT. THE APPLICANT HAS FILED EVIDENCE OF MEMBERSHIP FOR 194 OF THESE PERSONS. THE BOARD ACCORDINGLY IS SATISFIED THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 11TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

22. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

23. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

24. THE MATTER IS REFERRED TO THE REGISTRAR.

15327-68-R: TOBACCO WORKERS INTERNATIONAL UNION (A.F.L. C.I.O. & C.L.C.) (APPLICANT) v. IMPERIAL LEAF TOBACCO COMPANY OF CANADA LIMITED (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS P. J. O'KEEFFE AND J.E.C. ROBINSON.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER J.E.C.
ROBINSON: FEBRUARY 17, 1969.

• • •

3. THE EXAMINER WAS AUTHORIZED BY THE BOARD TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF TWO PERSONS INCLUDED ON THE LISTS FILED BY THE RESPONDENT, CLASSIFIED AS SECURITY GUARDS. THE APPLICANT'S POSITION IS THAT THESE TWO EMPLOYEES ARE WATCHMEN AND NOT SECURITY GUARDS WITHIN THE MEANING OF SECTION 9 OF THE LABOUR RELATIONS ACT AND SHOULD THEREFORE BE INCLUDED IN THE BARGAINING UNIT.

4. A SUMMARY OF THE EVIDENCE RELATING TO THIS MATTER IS THAT JAMES A. WAGNER (WHOSE TESTIMONY IS APPLIED TO BOTH EMPLOYEES) IS EMPLOYED AS A WATCHMAN ON A 42 HOUR WEEK BASIS RECEIVING AN HOURLY RATE PAID WEEKLY. HE SAID THERE ARE THREE WATCHMEN EMPLOYED AT THE PLANT ONE OF WHOM IS AN EMPLOYEE OF BARNES SECURITY. HE DOES NOT WEAR A UNIFORM OR A BADGE, DOES NOT CARRY ARMS, HAS NOT BEEN SWORN IN AS A SPECIAL CONSTABLE AND DOES NOT HAVE THE RIGHT TO ARREST. HE MAKES ROUNDS EVERY TWO HOURS, AND DURING HIS ROUNDS CHECKS AIR PRESSURE GAUGES, BURGLARLY SYSTEM, CLOSES GATES AND DOORS AND KEEPS A GENERAL WATCH THROUGHOUT THE PLANT. BEFORE MAKING EACH ROUND HE TELEPHONES THE POLICE TO LET THEM KNOW IF EVERYTHING IS ALL RIGHT. AFTER THE EMPLOYEES HAVE LEFT, HE CHECKS THE WASHROOMS, PUTS OUT LIGHTS AND CLOSES DOORS AND WINDOWS. HE DOES NOT CHECK THE EMPLOYEES IN AND OUT OF THE PLANT. IF HE FOUND A STRANGER IN THE PLANT HE WOULD ASK IF HE HAD PERMISSION TO BE THERE AND IF HE FOUND HE DID NOT HE WOULD TELEPHONE THE POLICE. HE HAD NOT BEEN INSTRUCTED BY MANAGEMENT AS TO PUTTING ANYONE OUT OF THE PLANT BUT HAS BEEN TOLD NOT TO LET ANYONE INTO THE PLANT. HE SAID THAT ANY LARGE PARCELS TAKEN OUT OF THE PLANT MUST BE APPROVED BY THE PLANT MAINTENANCE SUPERINTENDENT WHO IS HIS IMMEDIATE SUPERVISOR AND IF AN EMPLOYEE DID NOT HAVE SUCH APPROVAL HE WOULD TELEPHONE THE SUPERINTENDENT. HE DOES NOT KNOW IF HE HAS AUTHORITY TO PREVENT EMPLOYEES FROM LEAVING THE PLANT AND HE HAS NEVER DONE SO. HE IDENTIFIED A NOTICE POSTED BY THE RESPONDENT TO ALL EMPLOYEES TO THE FOLLOWING EFFECT:

"THE MANAGEMENT OF THIS PLANT HAS INSTRUCTED ALL WATCHMEN NOT TO ALLOW ANY PARCELS TO BE TAKEN FROM PLANT WITHOUT WRITTEN PERMISSION FROM EITHER MR. J. A. ROBERTSON OR MR. W. J. MCEWEN."

THIS NOTICE IS POSTED AT THE EMPLOYEES' ENTRANCE WHERE HE IS STATIONED AND HAS BEEN THERE FOR SOME TIME. HE THOUGHT THAT HE WAS TOLD BY MR. MCEWEN THAT HE WAS TO STOP PEOPLE AND QUESTION THEM IF THEY WERE CARRYING OUT LARGE PARCELS WITHOUT WRITTEN PERMISSION. HE SAID THAT HE HAD THE AUTHORITY TO LOOK INTO THE PARCEL. IF THE EMPLOYEE REFUSED TO LET HIM SEE THE PARCEL HE WOULD REPORT THE MATTER TO MANAGEMENT. THE PLANT IS CONCERNED WITH THE PROCESSING OF TOBACCO.

5. THE QUESTION FOR THE BOARD TO DETERMINE IN THIS MATTER IS WHETHER THOSE PERSONS CLASSIFIED BY THE RESPONDENT AS "WATCHMEN" ARE GUARDS WITHIN THE MEANING OF SECTION 9 OF THE LABOUR RELATIONS ACT IN WHICH CASE THEY WOULD BE EXCLUDED FROM THE BARGAINING UNIT. THIS DETERMINATION IS MADE ALL THE MORE DIFFICULT IN THIS CASE ON THE EVIDENCE BEFORE US WHICH APPEARS TO BE IN PLACES SOMEWHAT CONTRADICTORY IN THE AUTHORITY VESTED WITH THE WATCHMEN. THE RESPONDENT APPEARS TO HAVE CLOTHED THIS CLASSIFICATION WITH SOME OF THE DUTIES NORMALLY CARRIED ON BY SECURITY GUARDS AND YET NOT FULLY SO. IT IS SIGNIFICANT HOWEVER THAT THE RESPONDENT DOES EMPLOY A BARNES SECURITY GUARD WHO, AS WE UNDERSTAND IT, HAS THE SAME TYPE OF DUTIES AS THE WATCHMEN. CERTAINLY THE WATCHMEN ARE INVOLVED WITH THEIR EMPLOYER'S PROPERTY INSOFAR AS FIRE WATCHING BURGULARLY AND TRESPASSERS ARE CONCERNED. THESE DUTIES ALONE MAY NOT BE SUFFICIENT TO BRING AN EMPLOYEE WITHIN THE SCOPE OF THE MEANING OF THE WORD "GUARD" AS USED IN THE ACT. THE BOARD HAS BEEN CONCERNED WITH THE CONFLICT OF INTEREST EITHER ACTUAL OR POTENTIAL BETWEEN SUCH PERSONS AND THE OTHER PERSONS IN THE BARGAINING UNIT AND IN THE INSTANT MATTER, IT IS IN THIS AREA OF EXAMINATION THAT WE HAVE DIRECTED OURSELVES. WHETHER THE WATCHMEN HAVE IN FACT STOPPED EMPLOYEES AT THIS PLANT WITH RESPECT TO LARGE PARCELS IT REMAINS UNCONTRADICTED THAT THEY HAVE THE EXPRESSED AUTHORITY TO DO SO AND AS WELL TO SEARCH THE PARCELS. THERE IS THEN AN ELEMENT OF MONITORIAL AUTHORITY OVER THE EMPLOYEES IN THE BARGAINING UNIT WHICH, HAVING REGARD TO THE NATURE OF THE RESPONDENT'S BUSINESS, CANNOT BE IGNORED. A GUARD MAY NOT NECESSARILY HAVE HAD TO EXERCISE, DURING A CERTAIN PERIOD OF TIME, ALL THE POWERS WHICH HE MIGHT HAVE IN RESPECT TO HIS POSITION. SIMILARLY THE WATCHMEN IN THIS CASE HAVE NOT HAD AN OCCASION TO USE ALL THE AUTHORITY ATTACHING TO THEIR JOB, BUT IN OUR OPINION THERE IS SUFFICIENT EVIDENCE OF CONFLICT OF INTEREST BETWEEN THESE EMPLOYEES AND THOSE IN THE BARGAINING UNIT TO WHICH THE BOARD MUST GIVE WEIGHT IN ITS FINDINGS. GEORGE A. CRAIN Case 63 CLLC 16,291.

6. HAVING REGARD TO THE FOREGOING THE BOARD THEREFORE FINDS THAT THOSE PERSONS CLASSIFIED BY THE RESPONDENT AS WATCHMEN ARE GUARDS WITHIN THE MEANING OF SECTION 9 OF THE ACT AND ARE EXCLUDED FROM THE BARGAINING UNIT DESCRIBED BELOW.

7. HAVING REGARD TO THE AGREEMENT OF THE PARTIES THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT 252 POWER STREET, DELHI, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, GRADERS, BUYERS, CHIEF ENGINEER, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND SEASONAL EMPLOYEES, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE WERE MEMBERS OF THE APPLICANT ON NOVEMBER 20TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION, AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER P. J. O'KEEFFE:

I DISSENT WITH THAT PART OF THE DECISION WHICH RELATES TO WATCHMEN. HAVING REGARD TO ALL OF THE EVIDENCE WITH REGARD TO THOSE PERSONS CLASSIFIED AS WATCHMEN, I WOULD HAVE FOUND THAT THESE PERSONS ARE NOT GUARDS WITHIN THE MEANING OF SECTION 9 OF THE ACT AND I WOULD HAVE INCLUDED THEM IN THE BARGAINING UNIT.

15337-68-R: GENERAL TRUCK DRIVERS UNION LOCAL 938 INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. CAPITAL CITY TRANSPORT LIMITED (RESPONDENT) V. CANADIAN TRANSPORTATION WORKERS' UNION No. 158, N.C.C.L. (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: M. F. WIGLE AND W. REILLY FOR THE APPLICANT, F. G. HAMILTON, S. T. WACE, R. BEDARD AND G. RENAUD FOR THE RESPONDENT, CLIVE THOMAS AND L. LABONTE FOR THE INTERVENER.

DECISION OF THE BOARD:

FEBRUARY 4, 1969.

1. THIS IS A TIMELY APPLICATION FOR CERTIFICATION WHEREIN THE APPLICANT REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN. THE BOARD DIRECTED THAT A REPRESENTATION VOTE BE TAKEN IN A VOTING CONSTITUENCY COMPRISED OF ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF METROPOLITAN TORONTO AND DIRECTED THAT THE BALLOTS NOT BE COUNTED PENDING THE FURTHER DIRECTION BY THE BOARD.

2. ALL PARTIES IN THIS MATTER AGREED THAT THE BOARD HAD JURISDICTION TO ENTERTAIN THIS APPLICATION ON ITS MERITS.

3. THE APPLICANT APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF METROPOLITAN TORONTO WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT. THE RESPONDENT AND THE INTERVENER WERE PARTIES TO A COLLECTIVE AGREEMENT WHICH COVERED, AMONG OTHER PERSONS, ALL EMPLOYEES OF THE RESPONDENT WORKING IN AND OUT OF THE RESPONDENT'S OTTAWA AND TORONTO TERMINALS. APPARENTLY THE RESPONDENT AND THE INTERVENER HAD A BARGAINING HISTORY WHICH EXTENDED OVER A PERIOD OF APPROXIMATELY EIGHT YEARS WHEREIN THEY BARGAINED FOR EMPLOYEES IN THE OTTAWA AND TORONTO TERMINALS IN A SINGLE BARGAINING UNIT. THE INTERVENER HAD ORIGINALLY BEEN CERTIFIED BY THIS BOARD AS BARGAINING AGENT FOR THE OTTAWA EMPLOYEES AND WHEN THE RESPONDENT SUBSEQUENTLY OPENED ITS TERMINAL IN TORONTO, THE RESPONDENT VOLUNTARILY RECOGNIZED THE INTERVENER AS BARGAINING AGENT FOR THE TORONTO EMPLOYEES AND BOTH GROUPS WERE INCLUDED IN THE RECOGNITION CLAUSE OF THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER.

4. THE PARTIES AGREED THAT THE RESPONDENT OPERATED WHAT MAY BE DESCRIBED AS THE USUAL OVER THE ROAD HIGHWAY TRANSPORT OPERATION BETWEEN TORONTO AND OTTAWA AND OTHER POINTS WITH PICK-UP AND DELIVERY FACILITIES IN BOTH TORONTO AND OTTAWA. THERE IS NO REGULAR INTERCHANGE OF EMPLOYEES BETWEEN THE TWO TERMINALS.

5. THE APPLICANT RELIED UPON THE BOARD'S ESTABLISHED PRACTICE IN THE MOTOR VEHICLE TRANSPORT INDUSTRY TO CERTIFY EMPLOYEES OF EMPLOYERS IN BARGAINING UNITS DESCRIBED AS "ALL EMPLOYEES EMPLOYED AT OR WORKING OUT OF" NAMED LOCATIONS WHERE THE EMPLOYER OPERATES TERMINALS.

6. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT WHILE THE HISTORY OF BARGAINING BETWEEN THE RESPONDENT AND THE INTERVENER IS A FACTOR TO BE CONSIDERED A MORE COGENT FACTOR, HOWEVER, IS THE COMMON PRACTICE IN THE INDUSTRY AS RECOGNIZED BY THE BOARD'S USUAL PRACTICE OF CERTIFYING FOR UNITS OF EMPLOYEES EMPLOYED AT OR WORKING OUT OF A SPECIFIC LOCATION WHERE THE

EMPLOYER OPERATES A TERMINAL. SINCE THE BOARD AND THE APPLICANT WERE NOT PARTIES TO THE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER WITH RESPECT TO THE INCLUSION OF THE TORONTO AND OTTAWA TERMINALS IN ONE BARGAINING UNIT, AND FOR THE REASONS GIVEN IN THE KELSEY-HAYES CANADA LIMITED CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1968, p. 1058, THE BOARD THEREFORE FINDS THAT THERE IS NOTHING IN THE INSTANT CASE THAT WOULD CAUSE THE BOARD TO DEPART FROM ITS REGULAR PRACTICE IN THE MOTOR VEHICLE TRANSPORT INDUSTRY IN ONTARIO.

7. THE BOARD THEREFORE FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

8. THE BOARD FURTHER FINDS, FOR THE REASONS SET OUT ABOVE, THAT ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

9. THE BOARD DIRECTS THE REGISTRAR TO CAUSE THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE TO BE COUNTED AND REPORT TO THE BOARD.

15394-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. CORPORATION OF THE CITY OF LONDON, DR. JOHN DEARNES HOME FOR ELDER CITIZENS (RESPONDENT) v. LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U. (INTERVENER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: FRED H. PYKE FOR THE APPLICANT; F. S. GREGORY, Q.C., E. W. CHOWN, W. J. ANTHONY AND H. D. McCUTCHEON FOR THE RESPONDENT; J. HARVEY NICHOLLS, THOMAS J. MITCHELL AND JOHN D. TOPPIN FOR THE INTERVENER.

DECISION OF THE BOARD: FEBRUARY 12, 1969.

• • •

3. THE BARGAINING UNIT SOUGHT BY THE APPLICANT WAS "ALL GRADUATE REGISTERED NURSES (AMENDED TO GRADUATE AND REGISTERED NURSES) OF THE DEARNES HOME, LONDON, ONTARIO, SAVE AND EXCEPT THE DIRECTOR OF NURSING AND THOSE ABOVE THE RANK OF DIRECTOR OF NURSING."

4. LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., HEREINAFTER CALLED THE INTERVENER, WAS MADE A PARTY TO THE PROCEEDINGS BY DECISION OF THE BOARD DATED JANUARY 8, 1969.

5. LOCAL 220 IS PARTY TO A COLLECTIVE AGREEMENT BETWEEN IT AND THE CORPORATION OF THE CITY OF LONDON WITH RESPECT TO "ALL EMPLOYEES OF THE EMPLOYER, WHO ARE EMPLOYED AT THE DR. JOHN DEARNES HOME FOR ELDER CITIZENS, HEREINAFTER CALLED THE HOME, SAVE AND EXCEPT FOREMEN OR FORELADY, CHIEF ENGINEER, REGISTERED NURSES, SENIOR CHEF, CASUAL HELP WORKING LESS THAN TWENTY-FOUR HOURS PER WEEK, OFFICE STAFF." THE AGREEMENT RUNS FROM JANUARY 1, 1968 TO DECEMBER 31, 1969.

6. THE EVIDENCE IS THAT THE DEARNES HOME HAS ON ITS STAFF FIVE FULL-TIME GRADUATE REGISTERED NURSES AND ONE PART-TIME REGISTERED NURSE. THE INTERVENER AND THE RESPONDENT STATE THAT THE REGISTERED NURSES ARE EXCLUDED FROM THE BARGAINING UNIT DESCRIBED IN THE COLLECTIVE AGREEMENT BY REASON OF THE FACT THAT THEY EXERCISE MANAGERIAL FUNCTIONS. THERE ARE ALSO ON THE STAFF FIVE GRADUATE UNREGISTERED NURSES. THE INTERVENER AND THE RESPONDENT AGREE THAT OF THOSE FIVE UNREGISTERED GRADUATE NURSES, TWO FULL-TIME AND ONE PART-TIME ARE EMPLOYED IN A MANAGERIAL CAPACITY AND ARE EXCLUDED FROM THE COLLECTIVE AGREEMENT FOR THAT REASON. THE REMAINING TWO GRADUATE UNREGISTERED NURSES ARE SAID TO BE INCLUDED IN THE BARGAINING UNIT AND THEIR EARNINGS ARE SUBJECT TO THE CHECK-OFF REQUIRED UNDER THE TERMS OF THE COLLECTIVE AGREEMENT.

7. THE INTERVENER, THEREFORE, BARGAINS FOR UNREGISTERED GRADUATE NURSES ALTHOUGH THEY ARE NOT IDENTIFIED AS SUCH IN THE COLLECTIVE AGREEMENT. IT WOULD, THEREFORE, APPEAR THAT THE COLLECTIVE AGREEMENT BETWEEN THE INTERVENER AND THE RESPONDENT, WHICH DOES NOT EXPIRE UNTIL DECEMBER 31, 1969, CONSTITUTES AN EFFECTIVE BAR TO THE APPLICATION INSOFAR AS UNREGISTERED GRADUATE NURSES ARE CONCERNED. THEY, THEREFORE, AS A CLASS, ARE NOT AVAILABLE TO THE APPLICANT IN THIS MATTER AND THE QUESTION OF THEIR STATUS AS EMPLOYEES IS THEREFORE NOT ONE THAT NEED CONCERN THE BOARD IN THIS APPLICATION.

8. THE SITUATION IS NOT THE SAME, HOWEVER, WITH RESPECT TO THE REGISTERED NURSES. AS NOTED ABOVE, REGISTERED NURSES APPEAR IN THE LIST OF PERSONS EXCLUDED FROM THE BARGAINING UNIT. IT IS OF SOME INTEREST TO NOTE THAT THE PARTIES TO THE COLLECTIVE AGREEMENT AGREE THAT THE REGISTERED NURSES WERE EXCLUDED FROM THE BARGAINING UNIT IN THE ORIGINAL CERTIFICATE ISSUED BY THE BOARD TO THE INTERVENER. THE BASIS FOR THE EXCLUSION WAS NOT MADE CLEAR. AS NOTED ABOVE, HOWEVER, THE SAME PARTIES AGREE THAT THE EXCLUSION OF THE REGISTERED NURSES FROM THE AGREEMENT IS BASED UPON WHAT THOSE PARTIES CONSIDER TO BE THE EXERCISE OF MANAGERIAL FUNCTIONS. THE APPLICANT DOES NOT ACCEPT THAT POSITION.

9. IN THE CIRCUMSTANCES, THE BOARD IS OF THE OPINION THAT BEFORE REACHING A FINAL DETERMINATION OF THE MATTER, IT SHOULD SATISFY ITSELF WITH RESPECT TO THE STATUS OF THE REGISTERED NURSES TO WHOM THIS APPLICATION HAS REFERENCE.

10. ACCORDINGLY, MR. R. A. WOOLAND, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF THE REGISTERED NURSES EMPLOYED BY THE RESPONDENT.

15489-68-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. HUBERT TRANSPORT INC. (RESPONDENT).

APPEARANCES AT THE HEARING: M. F. WIGLE, WM. REILLY FOR THE APPLICANT, AND BERNARD DORAIL FOR THE RESPONDENT.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER H. F. IRWIN:
FEBRUARY 10, 1969.

1. THE APPLICANT IS APPLYING TO BE CERTIFIED AS BARGAINING AGENT FOR ALL DRIVERS AND HELPERS OF THE RESPONDENT IN METROPOLITAN TORONTO. THE RESPONDENT SUBMITS THAT THIS BOARD DOES NOT HAVE JURISDICTION TO ENTERTAIN THE APPLICATION AS ITS BUSINESS OPERATIONS HAVE BEEN DECLARED TO BE FOR THE GENERAL ADVANTAGE OF CANADA AND FALL UNDER THE JURISDICTION OF THE PARLIAMENT OF CANADA.

2. A CERTIFICATE WAS ISSUED BY THE CANADA LABOUR RELATIONS BOARD ON SEPTEMBER 24TH, 1965 TO GENERAL TRUCK DRIVERS UNION LOCAL 106 AS BARGAINING AGENT FOR EMPLOYEES OF THE RESPONDENT AT CERTAIN LOCATIONS IN QUEBEC AND AT TORONTO. THE RESPONDENT IS ENGAGED IN GENERAL TRANSPORT WITH DEPOTS IN TORONTO AND MONTREAL AND ITS MAIN OFFICE IN ST. THERESE, QUEBEC. FOLLOWING CERTIFICATION, GENERAL TRUCK DRIVERS UNION LOCAL 106 AND THE RESPONDENT ENTERED INTO A COLLECTIVE AGREEMENT COVERING ONLY THOSE OF ITS EMPLOYEES WORKING IN QUEBEC. DESPITE THIS LATTER FACT THE CANADA LABOUR RELATIONS BOARD HAS ACCEPTED JURISDICTION WITH RESPECT TO THE BARGAINING RIGHTS OF THE RESPONDENT'S EMPLOYEES, A CERTIFICATE FOR WHICH REMAINS OUTSTANDING.

3. IN THESE CIRCUMSTANCES WE ARE OF THE OPINION THAT WITHOUT COMPELLING EVIDENCE BY THE APPLICANT TO THE CONTRARY THIS BOARD IS WITHOUT JURISDICTION TO DEAL WITH THE APPLICATION AND WE SO FIND.

4. ACCORDINGLY THESE PROCEEDINGS ARE HEREBY TERMINATED.

DECISION OF BOARD MEMBER E. BOYER:

FEBRUARY 10, 1969.

I DISSENT. LOCAL 106 OF THE GENERAL TRUCK DRIVERS UNION ALTHOUGH NOTIFIED OF THESE PROCEEDINGS FAILED TO ATTEND AND MAKE REPRESENTATIONS. FURTHERMORE, THE COLLECTIVE AGREEMENT BETWEEN LOCAL 106 AND THE RESPONDENT COVERERS ONLY THOSE EMPLOYEES IN THE PROVINCE OF QUEBEC. HAVING REGARD TO THE FOREGOING I WOULD FIND THAT LOCAL 106 HAS ABANDONED ITS BARGAINING RIGHTS WITH RESPECT TO THOSE EMPLOYEES AFFECTED BY THIS APPLICATION.

ON THE REPRESENTATIONS MADE AT THE HEARING THAT THE RESPONDENT OPERATES A DEPOT IN TORONTO AND THAT ITS DRIVERS WORKING AT THIS DEPOT REMAIN IN ONTARIO, I WOULD FIND THAT THIS BOARD HAS JURISDICTION TO DEAL WITH THIS APPLICATION.

15494-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772(APPLICANT) v. COLUMBIAN CARBON (CANADA) LIMITED (RESPONDENT)
CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: FRED G. GRIGSBY AND BILL BLYTHE FOR THE APPLICANT, WILLIAM J. NICHOL FOR THE RESPONDENT, M. A. HEELEY FOR THE INTERVENER.

DECISION OF THE BOARD:

FEBRUARY 10, 1969.

1. THE APPLICANT APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR ALL EMPLOYEES EMPLOYED BY THE RESPONDENT AT ITS PLANT IN HAMILTON "SAVE AND EXCEPT, THE CHIEF STATIONARY ENGINEER, FOREMEN OTHER THAN STATIONARY ENGINEERS, PERSONS ABOVE THE RANK OF FOREMEN, OFFICE AND SALES STAFF." WHEN IT CAME TO THE APPLICANT'S ATTENTION, AT THE PRE-HEARING VOTE MEETING IN THIS MATTER, THAT STATIONARY ENGINEERS WHO HELD THE TITLE OF FOREMAN DID IN FACT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT, THE APPLICANT AMENDED ITS PROPOSED BARGAINING UNIT TO EXCLUDE ALL FOREMEN.

2. THE INTERVENER MADE CHARGES WITH RESPECT TO THE APPLICANT'S APPLICATION AND TOOK THE POSITION THAT BECAUSE OF THE MANNER IN WHICH THE APPLICANT HAD PROPOSED ITS BARGAINING UNIT IN ITS APPLICATION, THIS, IN ITSELF, WOULD CREATE UNDUE INFLUENCE AND SHOULD CAUSE THE APPLICANT'S APPLICATION TO BE DISMISSED.

3. NONE OF THE STATIONARY ENGINEERS WHO HELD THE TITLE OF FOREMAN WERE CLAIMED AS MEMBERS OF THE APPLICANT AND THERE WAS NO EVIDENCE THAT ANY OF THESE PERSONS OR, FOR THAT MATTER, ANY OTHER MEMBER OF MANAGEMENT IN ANY WAY ASSISTED THE APPLICANT'S CAMPAIGN TO ORGANIZE THE RESPONDENT'S EMPLOYEES. IN THE CIRCUMSTANCES OUTLINED ABOVE, THE BOARD IS SATISFIED THAT THERE IS NOTHING FROM WHICH IT COULD REASONABLY BE INFERRED THAT THERE WAS UNDUE INFLUENCE EXERTED ON THE RESPONDENT'S EMPLOYEES IN THE APPLICANT'S ORGANIZING CAMPAIGN. IT WOULD BE AN INTOLERABLE BURDEN AND AN IMPOSSIBLE ONUS IF THE BOARD WERE TO INSIST THAT A UNION MUST PROPOSE A BARGAINING UNIT WHICH WOULD SPECIFICALLY EXCLUDE ALL CLASSIFICATIONS WHICH MIGHT POSSIBLY EXERCISE MANAGERIAL FUNCTIONS. IF ANY DOUBT EXISTS WITH RESPECT TO SUCH CLASSIFICATIONS, A UNION MAY CLAIM THEM AND REQUEST THE BOARD TO DECIDE WHETHER THE EMPLOYEES IN SUCH CLASSIFICATIONS ARE EMPLOYEES FOR THE PURPOSE OF THE ACT. HOWEVER, IF THE BOARD DECIDES THAT SUCH EMPLOYEES DO EXERCISE MANAGERIAL FUNCTIONS, THEIR ACTIVITIES ON BEHALF OF, OR IN OPPOSITION TO THE UNION'S ORGANIZING CAMPAIGN MAY PROPERLY BE THE SUBJECT OF CHARGES WITH RESPECT TO EVIDENCE OF MEMBERSHIP. SEE, HOWEVER, THE BOARD'S DECISION IN THE AIR LIQUIDE CASE 64 CLLC ¶16,002.

4. THE INTERVENER ALSO TOOK THE POSITION THAT THE APPLICANT WAS NOT ENTITLED TO APPLY FOR A SINGLE BARGAINING UNIT ENCOMPASSING ALL OF THE RESPONDENT'S EMPLOYEES AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, STUDENTS AND OFFICE AND SALES STAFF. THE INTERVENER POINTED OUT THAT IT HAD AGREED WITH THE RESPONDENT IN THE COLLECTIVE AGREEMENT COVERING THE EMPLOYEES TO PROVIDE A RECOGNITION CLAUSE WHICH READS AS FOLLOWS:

2.01 (a) THE COMPANY RECOGNIZES THE UNION FOR THE DURATION OF THIS AGREEMENT AS THE BARGAINING AGENT OF ALL STATIONARY ENGINEERS AND HELPERS EMPLOYED BY COLUMBIAN CARBON (CANADA) LTD. AT ITS PLANT IN HAMILTON, SAVE AND EXCEPT SHIFT FOREMEN AND PERSONS ABOVE THE RANK OF SHIFT FOREMAN.

(b) THE COMPANY ALSO RECOGNIZES THE UNION FOR THE DURATION OF THIS AGREEMENT AS THE BARGAINING AGENT OF ALL ITS OTHER EMPLOYEES AT ITS PLANT IN HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF.

THE INTERVENER THEREFORE TOOK THE POSITION THAT BECAUSE OF THE MANNER IN WHICH THE RECOGNITION CLAUSE WAS WORDED, THERE WERE IN FACT TWO BARGAINING UNITS IN THE ONE COLLECTIVE AGREEMENT AND ACCORDINGLY THERE SHOULD BE TWO VOTING CONSTITUENCIES IN THIS MATTER.

5. IT IS NOT UNCOMMON FOR COLLECTIVE AGREEMENTS TO DESCRIBE BARGAINING UNITS IN TERMS OTHER THAN ALL EMPLOYEES, ETC. MANY BARGAINING UNITS ARE DESCRIBED IN TERMS OF A LIST OF CLASSIFICATIONS. OTHER BARGAINING UNITS ARE DESCRIBED BY NAMING THE DEPARTMENTS IN WHICH THE EMPLOYEES ARE EMPLOYED. IN SUCH CASES, THE BOARD TREATS THE COLLECTIVE AGREEMENT AS COVERING A SINGLE BARGAINING UNIT RATHER THAN SEVERAL DISTINCT BARGAINING UNITS.

6. EVEN THOUGH THE RECOGNITION CLAUSE IN THE INCUMBENT'S COLLECTIVE AGREEMENT IS DESCRIBED IN THE MANNER SET OUT ABOVE, WE FIND THAT IN THESE CIRCUMSTANCES IT MUST BE CONSTRUED AS ONE BARGAINING UNIT AND ACCORDINGLY THE EMPLOYEES IN THAT BARGAINING UNIT SHOULD PROPERLY BE GIVEN AN OPPORTUNITY TO VOTE IN A SINGLE VOTING CONSTITUENCY.

7. FOR THE REASONS SET OUT ABOVE, THE BOARD FINDS NO MERIT IN THE INTERVENER'S CHARGES WITH RESPECT TO THE APPLICANT'S APPLICATION OR THE MANNER IN WHICH THE PRE-HEARING REPRESENTATION VOTE WAS CONDUCTED.

8. THE BOARD THEREFORE DIRECTS THAT THE REGISTRAR CAUSE THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE IN THIS MATTER TO BE COUNTED AND REPORT TO THE BOARD.

15527-68-R: INTERNATIONAL CHEMICAL WORKER'S UNION (APPLICANT) v. MAPLE LEAF MILLS LIMITED (KOMOKA BRANCH) (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: TED WOHL, KEN ROGERS FOR THE APPLICANT, AND S. A. MILLER, E. HUNTER FOR THE RESPONDENT.

DECISION OF THE BOARD: FEBRUARY 4, 1969.

* * *

2. THE APPLICANT HAS APPLIED FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF THE RESPONDENT'S EMPLOYEES IN ITS MASTER FEEDS DIVISION AT KOMOKA. THE RESPONDENT TAKES THE POSITION THAT THE BOARD DOES NOT HAVE JURISDICTION TO DEAL WITH THIS APPLICATION AS THE NATURE OF ITS BUSINESS BRINGS MATTERS RELATING TO LABOUR RELATIONS EXCLUSIVELY WITHIN THE JURISDICTION OF THE PARLIAMENT OF CANADA. THE RESPONDENT RELIES ON THE PROVISIONS OF THE BRITISH NORTH AMERICA ACT, SECTION 92 (10)(c) AND THE CANADIAN WHEAT BOARD ACT, 1952 R.S.C. CHAPTER 44 AS AMENDED 1952-43 CHAPTER 26, 1957 c. 6 AND 1962 c. 21. THE RESPONDENT, AT THE HEARING, ADVISED THE BOARD THAT ITS OPERATIONS AT KOMOKA INCLUDED THE OPERATION OF A FEED MANUFACTURE PLANT, AN ELEVATOR FOR THE STORAGE OF GRAIN PRODUCTS AND A SEED CLEANING AND PACKAGING OPERATION.

3. THE RESPONDENT'S REPRESENTATIONS IN THE ABOVE RESPECT WERE UNCONTRADICTED AND IT IS CLEAR THEREFORE THAT IT COMES WITHIN THE DECLARATION CONTAINED IN SECTION 45 OF THE CANADIAN WHEAT BOARD ACT. THE BOARD HAS REFERENCE IN THIS RESPECT TO THE SUPERSWEET FORMULA FEEDS DIVISION OF ROBIN HOOD FLOUR MILLS LIMITED, O.L.R.B. MONTHLY REPORT, JUNE 1965 AT PAGE 212.

4. THIS MILL HAVING BEEN DECLARED TO BE A WORK FOR THE GENERAL ADVANTAGE OF CANADA, THIS BOARD IS WITHOUT JURISDICTION IN THE PRESENT APPLICATION.

5. THESE PROCEEDINGS ARE ACCORDINGLY TERMINATED.

15530-68-R: NURSES' ASSOCIATION YORK-OSHAWA DISTRICT HEALTH UNIT (APPLICANT) v. THE BOARD OF HEALTH OF THE YORK-OSHAWA DISTRICT HEALTH UNIT (RESPONDENT).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS R. W. TEAGLE AND E. BOYER.

APPEARANCES AT THE HEARING: D.F.O HERSEY, MRS. CLARA WIDEMAN, MISS KATHLEEN LEWIS FOR THE APPLICANT, B. W. BINNING, DR. E. F. SHAUNESSEY, DR. C. C. STEWART FOR THE RESPONDENT.

DECISION OF THE BOARD: FEBRUARY 4, 1969.

• • •

3. THE APPLICANT PROPOSES A BARGAINING UNIT COMPOSED OF "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT IN THE COUNTY OF YORK AND CITY OF OSHAWA, SAVE AND EXCEPT SUPERVISORS OF NURSING AND PERSONS ABOVE THIS CLASSIFICATION". THE RESPONDENT PROPOSES SEPARATE BARGAINING UNITS AS FOLLOWS: "(i) ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT IN THE COUNTY OF YORK SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR. (ii) ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT IN THE CITY OF OSHAWA, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR".

4. COUNSEL FOR THE APPLICANT AND THE RESPONDENT ADVISED THE BOARD THAT THE PRESENT RESPONDENT RESULTED FROM THE AMALGAMATION OF THE BOARD OF HEALTH OF THE YORK COUNTY HEALTH UNIT WITH THE HEALTH FACILITIES OF THE CORPORATION OF THE CITY OF OSHAWA. THEY FURTHER ADVISED THE BOARD THAT THERE IS AN ASSISTANT DIRECTOR OF PUBLIC HEALTH NURSING IN THE COUNTY OF YORK AND ANOTHER IN OSHAWA WHO DIRECT THE NURSES IN THOSE RESPECTIVE AREAS. THERE IS ALSO NO INTERCHANGE OF EMPLOYEES FROM OSHAWA TO YORK OR YORK TO OSHAWA. THE CENTRAL

ADMINISTRATIVE OFFICES ARE LOCATED IN OSHAWA AND THE DIRECTOR OF PUBLIC HEALTH NURSING SERVICES IS LOCATED IN OSHAWA. THE EMPLOYEES HAVE THE SAME SKILLS, UNDERGO THE SAME TRAINING AND WHILE THERE WAS SOME INDICATION THAT THE CONDITIONS OF EMPLOYMENT IN OSHAWA DIFFERED FROM THOSE IN YORK, THE DIFFERENCES WERE NOT SIGNIFICANT.

5. WHILE THERE ARE FACTORS PRESENT IN THE INSTANT SITUATION WHICH INDICATE SEPARATE UNITS MAY BE APPROPRIATE, THERE ARE ALSO FACTORS THAT INDICATE A COMPREHENSIVE UNIT IS APPROPRIATE. HAVING REGARD TO THE FACT THAT THE AMALGAMATION TOOK PLACE TO FACILITATE THE ADMINISTRATION OF THE SEPARATE HEALTH FACILITIES AND CONSIDERING THAT THERE IS PRESENTLY A CENTRAL ADMINISTRATION; THAT THE ULTIMATE SUPERVISION IS IN OSHAWA; THAT ALL THE EMPLOYEES HAVE THE SAME SKILLS AND PERFORM SIMILAR DUTIES; THAT THE EMPLOYEES HAVE A COMMUNITY OF INTEREST WITH RESPECT TO WAGES, HOURS, AND WORKING CONDITIONS AND THAT THE EMPLOYEES ARE DESIROUS OF A COMPREHENSIVE UNIT, WE FIND THE MORE COMPREHENSIVE UNIT TO BE APPROPRIATE AND PREFERABLE IN THE INSTANT CASE.

6. WE THEREFORE FIND THAT ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT IN THE COUNTY OF YORK AND CITY OF OSHAWA, SAVE AND EXCEPT SUPERVISORS OF NURSING AND PERSONS ABOVE THE RANK OF SUPERVISOR OF NURSING, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

7. AT THE HEARING WE WERE ADVISED THAT THE NURSES ASSOCIATION YORK COUNTY HEALTH UNIT AND THE NURSES ASSOCIATION OSHAWA HEALTH DEPARTMENT HAD ABANDONED THEIR BARGAINING RIGHTS WITH RESPECT TO THE BOARD OF HEALTH OF THE YORK COUNTY HEALTH UNIT AND THE CORPORATION OF THE CITY OF OSHAWA RESPECTIVELY. SUBSEQUENT TO THE HEARING THESE ASSOCIATIONS FORWARDED TO THE BOARD THE CERTIFICATES WHICH THE BOARD HAD ISSUED TO THEM. WE THEREFORE FIND THAT THE NURSES ASSOCIATION YORK COUNTY HEALTH UNIT AND THE NURSES ASSOCIATION OSHAWA HEALTH DEPARTMENT HAVE ABANDONED THEIR RESPECTIVE BARGAINING RIGHTS.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JANUARY 16TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

15543-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772
(APPLICANT) v. GODERICH DISTRICT COLLEGIATE INSTITUTE (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS
P. J. O'KEEFFE AND J.E.C. ROBINSON.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER
J.E.C. ROBINSON: FEBRUARY 19, 1969.

• • •

2. THE APPLICATION IN THIS MATTER WAS FILED ON JANUARY THE 10TH, 1969. THE APPLICANT SEEKS CERTIFICATION OF BARGAINING AGENT FOR ALL STATIONARY ENGINEERS AND CUSTODIANS IN THE EMPLOY OF THE RESPONDENT.

3. IT WAS BROUGHT TO THE ATTENTION OF THE BOARD THAT THE RESPONDENT NAMED IN THE APPLICATION IS NO LONGER IN EXISTENCE, AND IT WAS ARGUED THAT THE APPLICATION SHOULD CONSEQUENTLY BE DISMISSED.

4. THE SECONDARY SCHOOLS AND BOARD OF EDUCATION ACT R.S.O. 1960 c. 362 WAS AMENDED BY THE SECONDARY SCHOOLS AND BOARD OF EDUCATION AMENDMENT ACT 1968, STATUTES OF ONTARIO c. 122. SECTION 8 OF THE LATTER ACT AMENDS THE FORMER ACT BY ADDING THERETO PART VI TITLED DIVISIONAL BOARDS OF EDUCATION. SECTION 84(2) (A) OF PART VI PROVIDES THAT AS OF JANUARY 1ST, 1969 ALL BOARDS HAVING JURISDICTION WHOLLY OR PARTLY IN A SCHOOL DIVISION ARE DISSOLVED.

5. IN VIEW OF THE FOREGOING, IT IS CLEAR THAT THE ENTITY NAMED AS RESPONDENT DID NOT EXIST AT THE DATE THE APPLICATION WAS MADE. IT IS REPLACED BY A DIFFERENT ENTITY KNOWN AS HURON COUNTY BOARD OF EDUCATION. THIS IS OBVIOUSLY NOT A MATTER WHICH SHOULD BE CURED UNDER THE PROVISIONS OF SECTION 78 OF THE ACT.

6. THE APPLICATION IS ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER P. J. O'KEEFFE: FEBRUARY 19, 1969.

THE APPLICANT AT THE HEARING IN THIS MATTER REQUESTED THE BOARD TO AMEND ITS APPLICATION TO CHANGE THE NAME OF THE RESPONDENT FROM GODERICH DISTRICT COLLEGIATE INSTITUTE TO HURON COUNTY BOARD OF EDUCATION.

THE SECONDARY SCHOOLS AND BOARD OF EDUCATION ACT R.S.O. 1960 c. 362 WAS AMENDED BY THE SECONDARY SCHOOLS AND BOARD OF EDUCATION AMENDMENT ACT 1968, STATUTES OF ONTARIO c. 122. PURSUANT TO THIS AMENDING ACT, GODERICH DISTRICT COLLEGIATE INSTITUTE WAS DISSOLVED AND BECAME PART OF A NEW ENTITY NAMELY HURON COUNTY BOARD OF EDUCATION.

IT IS PART OF THE BOARD'S COMMON FUND OF KNOWLEDGE THAT THE EFFECT OF THE AMENDING ACT WAS TO PROVIDE FOR LARGER SCHOOL UNITS. IT IS PART OF OUR KNOWLEDGE OF THE EFFECT OF THIS AMENDING ACT THAT GODERICH DISTRICT COLLEGIATE INSTITUTE WAS ABSORBED BY AND CAME UNDER THE JURISDICTION OF THE NEW SCHOOL BOARD ENTITY.

THIS APPLICATION WAS MADE NINE DAYS AFTER THE NEW SCHOOL BOARD ENTITY WAS ESTABLISHED. THE EVIDENCE AT THE HEARING WAS TO THE EFFECT THAT EVEN AT THE TIME OF THE HEARING, THE ADMINISTRATION OF THE NEW SCHOOL BOARD ENTITY WAS NOT AS YET PROPERLY ESTABLISHED AND THAT THE PROCESS OF ABSORPTION WAS STILL INCOMPLETE.

SECTION 78 OF THE ONTARIO LABOUR RELATIONS ACT PROVIDES AS FOLLOWS:

"WHERE IN ANY PROCEEDINGS BEFORE THE BOARD THE BOARD IS SATISFIED THAT A BONA FIDE MISTAKE HAS BEEN MADE WITH THE RESULT THAT THE PROPER PERSON OR TRADE UNION HAS NOT BEEN NAMED AS A PARTY OR HAS BEEN INCORRECTLY NAMED, THE BOARD MAY ORDER THE PROPER PERSON OR TRADE UNION TO BE SUBSTITUTED OR ADDED AS A PARTY TO THE PROCEEDINGS OR TO BE CORRECTLY NAMED UPON SUCH TERMS AS APPEAR TO THE BOARD TO BE JUST, R.S.O. 1960, c. 202, s. 78."

IN ACCORDANCE WITH THE FOREGOING PROVISION OF THE ACT, I WOULD HAVE ALLOWED THE APPLICANT'S REQUEST TO AMEND ITS APPLICATION AND WOULD HAVE DEALT WITH THIS APPLICATION ON ITS MERITS AND NOT HAVE IT DISMISSED ON A VERY FINE LEGAL TECHNICALITY.

15554-68-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) v. ARO OF CANADA LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS H.F. IRWIN AND P.J. O'KEEFFE.

APPEARANCES AT THE HEARING: J.V. GOODISON, L. FROGGATT AND W. FRASER FOR THE APPLICANT; G.G. HURLBURT AND K.H. ZINSMASTER FOR THE RESPONDENT; AND D.D. WHITE, B. YATES AND M. COX FOR A GROUP OF EMPLOYEES.

DECISION OF THE BOARD: FEBRUARY 19, 1969.

• • •

2. SUBSEQUENT TO THE HEARING THE RESPONDENT'S REPRESENTATIVE WROTE TO THE BOARD WITH RESPECT TO THE DESCRIPTION OF THE BARGAINING UNIT. THE NOTES OF THE CHAIRMAN AND THE RECOLLECTION OF THE PANEL MEMBERS REVEAL THAT THE REPRESENTATIVE STATED AT THE HEARING THAT THE RESPONDENT HAD NO OBJECTION TO THE SAME UNIT WHICH HAD BEEN AGREED TO BY THE PARTIES IN AN EARLIER CASE (BOARD FILE NO. 13043-67-R). THE

RESPONDENT'S REPRESENTATIVE MADE NO FURTHER SUBMISSIONS TO THE BOARD AT THE HEARING ON THE BARGAINING UNIT. IN THESE CIRCUMSTANCES THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND SUPERVISORS; PERSONS ABOVE THE RANK OF FOREMAN OR SUPERVISOR; SECRETARIES TO THE PRESIDENT, THE INDUSTRIAL SALES MANAGER, THE AUTOMOTIVE SALES MANAGER AND THE AERONAUTICAL SALES MANAGER; PAYMASTER; FIELD SALES STAFF; STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD; AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE PARTIES, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. THERE WAS FILED WITH THE BOARD IN CONNECTION WITH THIS APPLICATION A STATEMENT OF DESIRE OBJECTING TO THE APPLICATION. IT WAS ANNOUNCED TO COUNSEL FOR THE OBJECTORS AT THE HEARING THAT THERE WAS AN INSUFFICIENT OVERLAP OF PERSONS SIGNING THE STATEMENT OF DESIRE AND UNION APPLICATION CARDS AND RECEIPTS TO WARRANT THE BOARD CONDUCTING ITS USUAL INVESTIGATION WITH RESPECT TO THE STATEMENT OF DESIRE.

4. AT THIS POINT COUNSEL FOR THE OBJECTORS ASKED LEAVE OF THE BOARD FOR AN ADJOURNMENT IN ORDER TO ENABLE HIM TO FILE PARTICULARS OF ALLEGED IRREGULARITIES IN CONNECTION WITH THE APPLICANT'S MEMBERSHIP EVIDENCE. IT WAS MADE CLEAR THAT THESE ALLEGED IRREGULARITIES WERE NOT IN THE NATURE OF NON-PAY OR FORGERIES BUT, RATHER, RELATED TO MISREPRESENTATION AND/OR INTIMIDATION.

5. COUNSEL ADMITTED THAT HIS CLIENTS HAD KNOWLEDGE OF THE IRREGULARITIES AT LEAST A WEEK PRIOR TO THE HEARING. IT WAS FURTHER ADMITTED THAT THESE MATTERS WERE DRAWN TO THE ATTENTION OF ANOTHER MEMBER OF COUNSEL'S FIRM, AGAIN A WEEK PRIOR TO THE HEARING. COUNSEL APPEARING FOR THE OBJECTORS WAS ONLY BROUGHT INTO THE CASE THE DAY BEFORE THE HEARING AND IT WAS AT THAT TIME THAT HE FIRST BECAME AWARE OF THE MATTERS IN QUESTION.

6. THE BOARD HAS CONSIDERED THE REPRESENTATIONS OF THE PARTIES IN CONNECTION WITH THE REQUEST FOR AN ADJOURNMENT. THE GENERAL PRINCIPLES WHICH THE BOARD FOLLOWS IN MATTERS OF THIS KIND ARE SET OUT IN THE FLECK MANUFACTURING LIMITED CASE, 62 C.L.L.C. 1046, AS FOLLOWS:

IT IS INCUMBENT ON ALL PARTIES TO PROCEEDINGS BEFORE THE BOARD TO INVESTIGATE MATTERS RELEVANT TO THEIR CASES AS EARLY AS POSSIBLE AND IF THEY INTEND TO MAKE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT AGAINST ANOTHER PARTY TO DO SO PROMPTLY. THE OBJECT OF THIS REQUIREMENT, WHICH FINDS EXPRESSION IN SECTION 48

[NOW SECTION 47] OF THE RULES, IS OBVIOUSLY TO EXPEDITE AND FACILITATE THE HEARING AND PROCESSING OF APPLICATIONS UNDER THE ACT AND TO AVOID PREJUDICE, DELAY OR EMBARRASSMENT TO THE PARTIES INVOLVED. DELAYED AND LAST-MINUTE ALLEGATIONS, WHICH LEAD TO ADJOURNMENTS OR CAUSE PREJUDICE, EMBARRASSMENT OR UNNECESSARY EXPENSE TO THE OTHER PARTIES, AND WHICH WITH REASONABLE DILIGENCE COULD HAVE BEEN MADE AT A MORE TIMELY STAGE OF THE PROCEEDINGS WILL NOT BE ENTERTAINED EXCEPT FOR GOOD AND SUFFICIENT CAUSE.

IT IS CLEAR FROM AN EXAMINATION OF THE CASES DECIDED SINCE FLECK MANUFACTURING LIMITED THAT IN FACT SITUATIONS SIMILAR TO THE PRESENT CASE THE BOARD HAS REFUSED A REQUEST FOR AN ADJOURNMENT. SEE FOR EXAMPLE SEAWAY APPAREL LIMITED, O.L.R.B. MONTHLY REPORT, MAY 1967, P. 145; KING OPTICAL COMPANY, O.L.R.B. MONTHLY REPORT, JANUARY 1968, P. 952; NATIONAL STARCH & CHEMICAL Co. (CANADA) LTD., O.L.R.B. MONTHLY REPORT, SEPTEMBER 1968, P. 597 AND AMERICAN OPTICAL COMPANY CANADA LIMITED, O.L.R.B. MONTHLY REPORT, MAY 1968, P. 602.

7. COUNSEL REFERRED TO A DECISION DATED OCTOBER 10, 1968 IN VR/WESSON LIMITED, BOARD FILE 15128-66-R. THAT CASE, HOWEVER, INVOLVED A SOMEWHAT DIFFERENT SITUATION. THERE THE BOARD WAS DEALING WITH LATE ALLEGATIONS BY BOTH THE APPLICANT AND A GROUP OF OBJECTORS. IN THE PARTICULAR CIRCUMSTANCES OF THE CASE BOTH PARTIES WERE PERMITTED TO FILE SUCH ALLEGATIONS. HOWEVER, IN THE CONCLUDING PARAGRAPH OF THE DECISION IT IS POINTED OUT THAT A DIFFERENT RESULT MIGHT HAVE BEEN REACHED IF THE BOARD HAD BEEN CONCERNED ONLY WITH THE CHARGES OF THE APPLICANT. THE FACTS IN THE INSTANT CASE ARE ALSO DISTINGUISHABLE FROM THOSE IN PRE-CON MURRAY LIMITED, O.L.R.B. MONTHLY REPORT, NOVEMBER 1968, P. 793. THERE THE BOARD TOOK INTO CONSIDERATION THE FACT THAT AN ADJOURNMENT OF THE CASE WAS INEVITABLE ON ANOTHER MATTER. HERE, APART FROM THE REQUEST BY COUNSEL FOR THE OBJECTORS, THERE WAS NO NEED FOR A FURTHER HEARING IN THE MATTER.

8. COUNSEL FOR THE OBJECTORS DID NOT ATTEMPT TO EXPLAIN WHY THE DELAY HAD OCCURRED IN BRINGING THE ALLEGED IRREGULARITIES PROMPTLY TO THE ATTENTION OF THE BOARD AND THE OTHER PARTIES. IN THESE CIRCUMSTANCES AND HAVING REGARD TO ALL THE ABOVE CONSIDERATIONS, THE REQUEST FOR THE ADJOURNMENT IS DENIED.

9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JANUARY 24, 1969, THE TERMINAL

DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

15565-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. R. REININGER & SON LTD. (RESPONDENT). V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS P.J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: D. M. STOREY, L. RAO FOR THE APPLICANT, G.G. SMITH FOR THE RESPONDENT, JOHN COCOMILE FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: FEBRUARY 12, 1969.

• • •

3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THERE WAS FILED WITH THE BOARD A STATEMENT OF DESIRE IN OPPOSITION TO THIS APPLICATION CONTAINING THE NAMES OF SIXTY-SIX PERSONS, SIXTY-ONE OF WHOM APPEARED ON THE LISTS OF EMPLOYEES FILED BY THE RESPONDENT AND TWENTY OF THOSE WERE CLAIMED BY THE APPLICANT IN MEMBERSHIP. SINCE THIS REDUCED THE APPLICANT'S UNQUALIFIED EVIDENCE OF MEMBERSHIP TO LESS THAN THE PERCENTAGE REQUIRED TO OBTAIN A CERTIFICATE, THE BOARD CONDUCTED ITS USUAL INQUIRY INTO THE ORIGINATION, PREPARATION AND CIRCULATION OF THE PETITION. WHILE WE HAVE NO HESITATION IN ACCEPTING THE EVIDENCE OF FRED SCHOLL GIVEN IN SUPPORT OF THE PETITION HE WAS ONLY ABLE TO IDENTIFY SIX SIGNATURES OF THOSE PERSONS ALSO CLAIMED BY THE APPLICANT. FURTHERMORE, THERE WAS INSUFFICIENT EVIDENCE OFFERED WITH RESPECT TO THE CIRCULATION OF THE DOCUMENT BY PERSONS OTHER THAN MR. SCHOLL PERTAINING TO THE PERSONS WHO SIGNED THE DOCUMENT WHO COULD NOT BE IDENTIFIED BY MR. SCHOLL. CONSEQUENTLY, WE ARE NOT SATISFIED FROM THE EVIDENCE AS TO THE CIRCULATION AND THE MANNER IN WHICH EACH OF THE SIGNATURES WERE OBTAINED ON IT TO GIVE WEIGHT TO THE PETITION. IT SHOULD ALSO BE NOTED THAT MR. SCHOLL'S IDENTIFICATION OF ONLY SIX OF THOSE PERSONS ALSO CLAIMED BY THE APPLICANT WOULD LEAVE THE APPLICANT WITH THE REQUISITE UNQUALIFIED MEMBERSHIP EVIDENCE.

5. HAVING REGARD TO THE FOREGOING THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE WERE MEMBERS OF THE APPLICANT ON JANUARY 28TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

INDEXED ENDORSEMENTS - TERMINATION

15194-68-R: EMPLOYEES OF S.K.D. MANUFACTURING COMPANY LIMITED (APPLICANT) v. INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, FORT MALDEN LODGE NO. 890 (RESPONDENT) v. S.K.D. MANUFACTURING CO. LIMITED (INTERVENER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: A.F. DELUCA AND ROCCO D'ALIMONTE FOR THE APPLICANT; S.L. ROBINS, Q.C., DANIEL DEAN AND WILLIAM FRASER FOR THE RESPONDENT; W.L. FARRAR FOR THE INTERVENER.

DECISION OF THE BOARD: FEBRUARY 5, 1969.

1. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT. THE BOARD DIRECTED THE HOLDING OF A REPRESENTATION VOTE WHICH WAS TAKEN ON DECEMBER 9, 1968. THE BALLOT BOX WAS SEALED BY THE RETURNING OFFICER FOLLOWING ALLEGATIONS BY THE RESPONDENT THAT THE 72 HOUR "SILENT PERIOD" HAD BEEN VIOLATED. THE MATTER WAS SET DOWN TO HEAR EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES ON THE ALLEGATIONS AS SET OUT IN LETTERS OF THE RESPONDENT AND THE APPLICANT DATED DECEMBER 12, 1968 AND DECEMBER 16, 1968 RESPECTIVELY. THE RESPONDENT CONTENTED THAT THERE HAD BEEN A BREACH OF THE DIRECTION OF THE REGISTRAR MADE PURSUANT TO SECTION 43(J) OF THE RULES OF PROCEDURE TO THE EFFECT THAT ALL INTERESTED PERSONS REFRAIN AND DESIST FROM PROPAGANDA AND ELECTIONEERING DURING THE DAY OR DAYS THE VOTE IS TAKEN AND FOR SEVENTY-TWO HOURS BEFORE THE DAY ON WHICH THE VOTE IS COMMENCED.

2. IN SUPPORT OF ITS CASE, THE RESPONDENT ESTABLISHED THAT THE BOARD'S FORM 42 (NOTICE OF TAKING OF VOTE) HAD BEEN DEFACED AND HAD REMAINED DEFACED THROUGHOUT A CONSIDERABLE PART OF THE SEVENTY-TWO HOUR PERIOD AND ON THE DATE OF THE VOTING. THE

NOTICES ARE REQUIRED TO BE POSTED AND CONTAIN THE ADMONITION THAT "THIS IS AN OFFICIAL NOTICE OF THE BOARD AND MUST NOT BE REMOVED OR DEFACED". THE NOTICE CONTAINS A SAMPLE BALLOT. A "NO" VOTE INDICATED REJECTION OF THE RESPONDENT.

3. THE DEFACEMENT COMPLAINED OF CONSISTED OF THE INSERTION WITH PENCIL OR PEN OF AN X IN THE BOXES MARKED "NO" IN THE FOUR OF THE SIX NOTICES PRODUCED. IN ADDITION, THERE WAS A VULGAR WORD INSERTED IN THE "YES" BOX OF ONE OF THESE NOTICES. THE TWO OTHER NOTICES APPARENTLY HAD HAD SOMETHING MARKED INTO BOTH THE "YES" AND THE "NO" BOXES IN THE SAMPLE BALLOT, BUT HAD BEEN SUBJECTED TO AN ATTEMPT AT ERASURE. THE MARKINGS ARE OBVIOUS DEFACEMENTS WHICH WOULD NOT MISLEAD ANY REASONABLE PERSON, EVEN THOSE WHO, THE RESPONDENT ARGUED, WERE DEFICIENT IN THE KNOWLEDGE OF ENGLISH. THERE WAS NO EVIDENCE WHATSOEVER INDICATING WHO THE AUTHOR OR AUTHORS OF THE DEFACEMENTS MIGHT BE.

4. HAVING REGARD TO ALL THE EVIDENCE, WE FIND THAT IT DOES NOT CONSTITUTE GROUNDS FOR VOIDING THE REPRESENTATION VOTE IN THIS MATTER.

5. THE REGISTRAR IS DIRECTED TO CAUSE THE BALLOTS CAST IN THE REPRESENTATION VOTE TO BE COUNTED AND TO REPORT THE RESULT TO THE BOARD.

15434-68-R: KAP IMPERIAL SERVICE STATION (APPLICANT) v. THE LUMBER & SAWMILL WORKERS' UNION LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: R. E. WAGNER, F.V. DONEGAN FOR THE APPLICANT, AND R. BRIXHE FOR THE RESPONDENT.

DECISION OF THE BOARD: FEBRUARY 4, 1969.

• • •

2. THE APPLICANT HAS APPLIED ON DECEMBER 5TH, 1968 FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT PURSUANT TO THE PROVISIONS OF SECTION 45 OF THE LABOUR RELATIONS ACT. THE RESPONDENT WAS CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE APPLICANT ON THE 29TH DAY OF AUGUST 1968.

3. FOLLOWING CERTIFICATION THE RESPONDENT GAVE TO THE APPLICANT A NOTICE TO BARGAIN BY LETTER DATED SEPTEMBER 9TH, 1968. BY LETTER DATED SEPTEMBER 18TH, 1968 THE RESPONDENT FORWARDED ITS PROPOSALS TO THE APPLICANT. IN ESSENCE ITS PROPOSAL WAS THAT THE TERMS OF A COLLECTIVE AGREEMENT WHEN ARRIVED AT BETWEEN SPRUCE MOTORS COMPANY LIMITED AND THE RESPONDENT WOULD BE APPLIED TO THE EMPLOYEES OF THE APPLICANT. THE EVIDENCE OF THE APPLICANT IS THAT PARTIES MET AND BARGAINED WITH RESPECT TO SPRUCE MOTORS COMPANY LIMITED AND DID NOT AT ANY TIME UP TO THE DATE OF THE APPLICATION BARGAIN WITH RESPECT TO THE APPLICANT'S EMPLOYEES. IT APPEARS THAT SPRUCE MOTORS COMPANY LIMITED AND THE APPLICANT ARE OWNED BY THE SAME PERSONS BUT FRED DONEGAN, ONE OF THE PARTNERS IN THE APPLICANT STATED THAT THEY ARE COMPLETELY DIFFERENT ENTITIES WITH NO RELATIONSHIP ONE TO THE OTHER AND ON THIS BASIS MADE IT CLEAR TO THE RESPONDENT THAT THEY WOULD NOT BARGAIN FOR THE TWO COMPANIES JOINTLY. HE DID NOT THINK THAT THEY AGREED TO NEGOTIATE WITH RESPECT TO THE APPLICANT FOLLOWING THE OTHER NEGOTIATIONS.

4. ROBERT RACICOT, AN EMPLOYEE OF SPRUCE MOTORS COMPANY LIMITED, ATTENDED THE BARGAINING MEETING AS A DELEGATE OF THE EMPLOYEES OF THAT COMPANY ON SEPTEMBER 19TH, 1968. HE SAID THAT AT THAT MEETING MR. WAGNER, AN OWNER, STATED THAT BOTH COMPANIES WERE DIFFERENT AND THEY SHOULD NOT BE DISCUSSED AT A MEETING JOINTLY. RACICOT ALSO ATTENDED A FURTHER MEETING IN NOVEMBER IN WHICH THE SUBJECT OF THE APPLICANT'S NEGOTIATIONS WERE MENTIONED BUT MR. WAGNER REFERRED BACK TO HIS STATEMENT AT THE SEPTEMBER 19TH MEETING. THE WITNESS WAS UNCLEAR IN WHETHER THERE WAS AN AGREEMENT THAT THE APPLICANT'S NEGOTIATIONS WOULD FOLLOW THOSE OF SPRUCE MOTORS COMPANY LIMITED AND COULD NOT RECALL WHAT, IF ANYTHING, WAS SAID ABOUT THE APPLICANT.

5. THE BOARD RECEIVED A LETTER DATED DECEMBER 5TH, 1968 SIGNED BY FOUR PERSONS PURPORTING TO BE EMPLOYEES OF THE APPLICANT IN SUPPORT OF THE APPLICATION. NONE OF THEM APPEARED AT THE HEARING TO GIVE ORAL TESTIMONY WITH RESPECT TO THE LETTER. IT IS ALSO NOTED THAT ALTHOUGH NOTICE OF THIS APPLICATION WAS POSTED ON THE APPLICANT'S PREMISES NONE OF THE APPLICANT'S EMPLOYEES IN THE BARGAINING UNIT INTERVENED TO OPPOSE THE APPLICATION.

6. IT IS APPARENT FROM THE FACTS SET OUT ABOVE THAT THE RESPONDENT ALLOWED A PERIOD OF MORE THAN 60 DAYS TO ELAPSE FOLLOWING THE DELIVERY OF ITS PROPOSALS TO THE APPLICANT ON SEPTEMBER 18TH, 1968 DURING WHICH TIME IT DID NOT SEEK TO BARGAIN. THE APPLICANT'S POSITION WAS MADE ENTIRELY CLEAR TO THE RESPONDENT AT THE FIRST MEETING HELD WITH RESPECT TO SPRUCE MOTORS COMPANY LIMITED ON SEPTEMBER 19TH, 1968 AND ALTHOUGH THE RESPONDENT SEEMED

TO ASSUME THAT THERE WAS SOME MEETING OF THE MINDS WITH RESPECT TO BARGAINING FOR THE EMPLOYEES OF THE APPLICANT THE EVIDENCE PRESENTED TO THE BOARD WAS VERY INCONCLUSIVE IN THIS AREA AND DOES NOT, IN OUR OPINION, CONSTITUTE A SUFFICIENT ANSWER FOR THE RESPONDENT'S OBVIOUS DELAY IN FORWARDING THE INTERESTS OF THE EMPLOYEES CONCERNED. FOR REFERENCE SEE THE Dominion Stores Limited Case CCH CANADIAN LABOUR LAW REPORTER 1955-59, TRANSFER BINDER 16,047.

7. IN THE CIRCUMSTANCES OF THIS CASE THE BOARD FINDS THAT A REAL QUESTION ARISES WITH RESPECT TO THE WISHES OF THE EMPLOYEES IN THE BARGAINING UNIT TO CONTINUE TO BE REPRESENTED BY THE RESPONDENT. THE BOARD ACCORDINGLY PURSUANT TO THE PROVISIONS OF SECTION 45(2) OF THE ACT IS OF THE OPINION THAT A REPRESENTATION VOTE SHOULD BE TAKEN TO DETERMINE THE TRUE WISHES OF THE EMPLOYEES IN THIS REGARD.

8. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF AMONG ALL EMPLOYEES OF THE APPLICANT AT KAPUSKASING, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF, ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN.

9. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE RESPONDENT.

10. THE MATTER IS REFERRED TO THE REGISTRAR.

15601-68-R: NEATE CONSTRUCTION LTD. (APPLICANT) v. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL 498 BRANTFORD ONTARIO (RESPONDENT).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: DOUGLAS NEATE FOR THE APPLICANT, PAUL A. MARSHALL FOR THE RESPONDENT.

DECISION OF THE BOARD:

FEBRUARY 13, 1969.

1. THIS IS AN APPLICATION TO THE BOARD UNDER SECTION 45 OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE RESPONDENT UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT FOR WHICH IT IS THE BARGAINING AGENT. THE APPLICANT SUBMITS THAT IT IS ENTITLED TO THE REMEDY THAT IT IS SEEKING BY REASON OF THE FACT THAT THE RESPONDENT FAILED TO GIVE NOTICE PURSUANT TO SECTION 11 OF THE ACT OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT WITHIN SIXTY DAYS FOLLOWING CERTIFICATION.

2. THE APPLICANT WAS CERTIFIED BY THIS BOARD ON SEPTEMBER 10TH, 1968 AS BARGAINING AGENT FOR A UNIT OF ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE APPLICANT IN THE COUNTIES OF BRANT AND NORFOLK. THE EVIDENCE IS THAT IN THE MONTH OF OCTOBER 1968, PAUL MARSHALL, A BUSINESS AGENT FOR THE RESPONDENT UNION, ON TWO OCCASIONS TELEPHONED DOUGLAS NEATE, THE PRESIDENT OF THE APPLICANT COMPANY, WITH A VIEW TO MEETING WITH HIM ON ONE OF THE THREE JOB SITES WHERE THE APPLICANT WAS WORKING. IT APPEARS THAT A MEETING OF THE TWO MEN DID NOT TAKE PLACE AS A RESULT OF THESE TELEPHONE CONVERSATIONS. MARSHALL AGAIN TELEPHONED NEATE TOWARDS THE LATTER PART OF OCTOBER AND ARRANGED TO MEET WITH HIM AT HIS HOME THE SAME EVENING. AT THIS MEETING, MARSHALL PRESENTED NEATE WITH A COLLECTIVE AGREEMENT AND REQUESTED HIM TO SIGN IT ON BEHALF OF THE APPLICANT COMPANY. SOME DISCUSSION ENSUED ON THAT OCCASION AS TO THE NUMBER OF OTHER CONTRACTORS IN THE AREA WHO HAD ENTERED INTO A COLLECTIVE AGREEMENT WITH THE RESPONDENT AND WHETHER NEATE HIMSELF WOULD BE ABLE TO CONTINUE TO WORK WITH THE TOOLS OF THE TRADE IF HE SIGNED THE AGREEMENT. AT THAT MEETING, NEATE DECLINED TO SIGN THE COLLECTIVE AGREEMENT PRESENTED TO HIM BY MARSHALL.

3. ON NOVEMBER 20TH, 1968, MARSHALL WROTE A LETTER TO NEATE AND REQUESTED THAT THEY MEET AT THE BUILDING AND CONSTRUCTION TRADES HALL IN BRANTFORD ON NOVEMBER 25TH, 1968, FOR THE PURPOSE OF ENTERING INTO A COLLECTIVE AGREEMENT. THE TWO MEN AGAIN MET AT THE TIME AND PLACE DESIGNATED IN MARSHALL'S LETTER. ONCE AGAIN SOME DISCUSSION ENSUED AS TO WHAT OTHER CONTRACTORS HAD ENTERED INTO COLLECTIVE AGREEMENTS WITH THE RESPONDENT AND THE POSITION OF NEATE HIMSELF. ON THAT OCCASION, MARSHALL INDICATED THAT SOME SPECIAL ARRANGEMENTS COULD BE WORKED OUT CONCERNING NEATE WORKING ON HIS OWN PROJECTS. NEATE, HOWEVER, DID NOT SIGN THE COLLECTIVE AGREEMENT PRESENTED TO HIM BY MARSHALL.

4. IN DECEMBER OF 1968, THE RESPONDENT APPLIED TO THE MINISTER FOR CONCILIATION SERVICES. A CONCILIATION OFFICER WAS APPOINTED ON DECEMBER 23RD, 1968, AND HE MET WITH THE PARTIES ON JANUARY 6TH. THE APPLICANT AND THE RESPONDENT, HOWEVER, DID NOT THEN NOR HAVE THEY SUBSEQUENTLY ENTERED INTO A COLLECTIVE AGREEMENT. BY LETTER DATED JANUARY 14TH, 1969, THE PARTIES WERE ADVISED THAT THE MINISTER HAD DECIDED NOT TO APPOINT A BOARD OF CONCILIATION.

5. WHILE THE RESPONDENT DID NOT GIVE WRITTEN NOTICE TO THE APPLICANT OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT WITHIN SIXTY DAYS FOLLOWING CERTIFICATION, THE PARTIES DID MEET AND BARGAIN DURING THAT PERIOD. THE FACT THAT BARGAINING DID TAKE PLACE DURING THE PERIOD OBLIGATES THE REQUIREMENT OF GIVING NOTICE AS PROVIDED FOR IN SECTION 11 OF THE ACT. THIS IS IMPLICIT IN SECTION 13 OF THE ACT, WHICH PROVIDES THAT NOTWITHSTANDING THE FAILURE OF A

TRADE UNION TO GIVE NOTICE UNDER SECTION 11, WHERE THE PARTIES HAVE MET AND BARGAINED, THE MINISTER, UPON THE REQUEST OF EITHER PARTY, MAY APPOINT A CONCILIATION OFFICER TO CONFER WITH THE PARTIES AND ENDEAVOUR TO EFFECT A COLLECTIVE AGREEMENT. THIS WAS DONE IN THE INSTANT CASE.

6. WE WOULD POINT OUT THAT THE MAKING OF A DECLARATION UNDER SECTION 45 TERMINATING THE BARGAINING RIGHTS OF A TRADE UNION LIES IN THE DISCRETION OF THE BOARD. BEFORE THE BOARD WILL EXERCISE ITS DISCRETION IN FAVOUR OF THE APPLICANT COMPANY, HOWEVER, IT MUST BE SATISFIED THAT THE TRADE UNION WHICH HOLDS THE BARGAINING RIGHTS HAS FAILED TO TAKE STEPS WITHIN A REASONABLE TIME TO FORWARD THE INTERESTS OF THE EMPLOYEES WHOM IT REPRESENTS. IN DETERMINING WHETHER THE TRADE UNION HAS ADEQUATELY PURSUED THE INTERESTS OF THE EMPLOYEES, THE BOARD DOES NOT CONFINE ITSELF TO A CONSIDERATION OF THE EVENTS THAT OCCUR WITHIN THE SIXTY DAYS FROM THE DATE OF CERTIFICATION. RATHER IT TAKES INTO ACCOUNT THE CIRCUMSTANCES COVERING THE ENTIRE PERIOD UP TO THE DATE OF THE FILING OF THE APPLICATION FOR TERMINATION OF THOSE BARGAINING RIGHTS (SEE STARK TRUCK SERVICES (LONDON) LIMITED CASE, O.L.R.B. MONTHLY REPORT, MAY 1964, P. 149 AND GRAHAM TRANSPORT LIMITED CASE, O.L.R.B. MONTHLY REPORT, MAY 1968, P. 184).

7. IN LIGHT OF THE EVIDENCE BEFORE THE BOARD IN THE INSTANT CASE, WE ARE NOT SATISFIED THAT THE RESPONDENT HAS BEEN REMISS IN PURSUING THE INTERESTS OF THE EMPLOYEES IN THE UNIT FOR WHICH IT IS THE CERTIFIED BARGAINING AGENT. ACCORDINGLY, WE DO NOT FIND THAT THE PURPOSE AND INTENT OF SECTION 45 WOULD BE SERVED BY TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT. THE BOARD THEREFORE IS NOT PREPARED, IN THE EXERCISE OF ITS DISCRETION, TO ISSUE THE DECLARATION SOUGHT BY THE APPLICANT.

8. THE APPLICATION ACCORDINGLY IS DISMISSED.

15654-68-R: EMPLOYEES OF MODERN FOOTWEAR COMPANY (APPLICANTS) v. FUR, LEATHER, SHOE & ALLIED WORKERS' UNION (RESPONDENT).

(Re: MODERN FOOTWEAR COMPANY).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD:

FEBRUARY 11, 1969.

1. THE APPLICANTS HAVE APPLIED ON FEBRUARY 6TH, 1969 FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT WITH RESPECT TO THAT UNIT OF EMPLOYEES OF MODERN FOOTWEAR COMPANY AT METROPOLITAN TORONTO REPRESENTED BY THE RESPONDENT UNION. IN SUPPORT OF THEIR APPLICATION, THE APPLICANTS FILED A DOCUMENT SIGNED BY 27 EMPLOYEES OF THE COMPANY. WHILE THE APPLICANTS DID NOT INDICATE IN THEIR APPLICATION THE SECTION OF THE LABOUR RELATIONS ACT UNDER WHICH THIS APPLICATION IS MADE, IT WOULD APPEAR FROM THE MANNER IN WHICH THE APPLICATION WAS MADE THAT THE APPLICANTS HAVE APPLIED UNDER SECTION 43 OF THE ACT.

2. IT WOULD APPEAR THAT THE RESPONDENT UNION WAS CERTIFIED FOR ALL EMPLOYEES OF MODERN FOOTWEAR COMPANY, A DIVISION OF JACK SCHWEBEL LIMITED AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, ON THE 12TH DAY OF APRIL, 1967. A COLLECTIVE AGREEMENT WAS APPARENTLY ENTERED INTO BETWEEN THE UNION AND THE COMPANY WHICH EXPIRED ON NOVEMBER 1ST, 1968. IT WOULD FURTHER APPEAR THAT A CONCILIATION OFFICER WAS APPOINTED BY THE MINISTER TO ASSIST THE RESPONDENT AND MODERN FOOTWEAR COMPANY, A DIVISION OF JACK SCHWEBEL LIMITED ON JANUARY 24TH, 1969, AND THAT THE CONCILIATION OFFICER MET WITH THE PARTIES ON FEBRUARY 7TH, 1969, AND HAS SCHEDULED A FURTHER MEETING TO BE HELD ON FEBRUARY 17TH, 1969.

3. SECTION 43 OF THE ACT PROVIDES THAT AN APPLICATION FOR TERMINATION CAN ONLY BE MADE PURSUANT TO THAT SECTION PRIOR TO THE TIME AT WHICH THE MINISTER HAS APPOINTED A CONCILIATION OFFICER.

4. SECTION 46(2) OF THE ACT PROVIDES THAT AN APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF A TRADE UNION CANNOT BE MADE WHERE A CONCILIATION OFFICER HAS BEEN APPOINTED BY THE MINISTER UNLESS FOLLOWING SUCH APPOINTMENT:

- (A) AT LEAST TWELVE MONTHS HAVE ELAPSED FROM THE DATE OF THE APPOINTMENT OF THE CONCILIATION OFFICER OR A MEDIATOR; OR
- (B) A CONCILIATION BOARD OR A MEDIATOR HAS BEEN APPOINTED AND THIRTY DAYS HAVE ELAPSED AFTER THE REPORT OF THE CONCILIATION BOARD OR THE MEDIATOR HAS BEEN RELEASED BY THE MINISTER TO THE PARTIES; OR
- (C) THIRTY DAYS HAVE ELAPSED AFTER THE MINISTER HAS INFORMED THE PARTIES THAT HE DOES NOT DEEM IT DESIRABLE TO APPOINT A CONCILIATION BOARD,

WHICHEVER IS LATER.

5. IT THEREFORE APPEARS TO THE BOARD FROM THE FACTS SET OUT ABOVE THAT NONE OF THE TIME PERIODS REFERRED TO IN THE PRECEDING PARAGRAPH COULD HAVE ELAPSED BETWEEN THE DATE OF THE APPOINTMENT OF THE CONCILIATION OFFICER AND THE DATE OF THE MAKING OF THIS APPLICATION.

6. IF THE BOARD IS CORRECT IN ITS ASSUMPTION THAT THE ABOVE ARE THE FACTS OF THIS CASE IT WOULD FOLLOW, PURSUANT TO THE PROVISIONS OF SECTION 46(2) OF THE ACT, THAT THIS APPLICATION IS UNTIMELY.

7. THE BOARD ACCORDINGLY DIRECTS THE APPLICANTS TO ADVISE THE BOARD IN WRITING ON OR BEFORE THE 18TH DAY OF FEBRUARY, 1969, WHETHER, IN THEIR OPINION, THE BOARD IS IN ERROR IN ASSUMING THAT THE FACTS OF THIS CASE ARE AS SET OUT ABOVE. IF THE APPLICANTS ARE OF OPINION THAT THE BOARD IS IN ERROR THEY WILL INCLUDE IN THEIR ADVICE TO THE BOARD A SUMMARY OF THE FACTS IN SUPPORT OF THEIR OPINION.

8. THIS APPLICATION WILL NOT BE PROCESSED FURTHER PENDING THE RECEIPT OF SUCH ADVICE AND SUMMARY OF FACTS FROM THE APPLICANTS.

9. IF THE BOARD DOES NOT RECEIVE SUCH ADVICE SUPPORTED BY A SUMMARY OF FACTS AS HEREIN DIRECTED, THIS APPLICATION WILL BE DISPOSED OF PURSUANT TO THE PROVISIONS OF SECTION 46 OF THE BOARD'S RULES OF PROCEDURE WITHOUT FURTHER NOTICE TO THE APPLICANTS.

DECISION OF THE BOARD:

FEBRUARY 20, 1969.

1. IN ITS DECISION DATED FEBRUARY 11TH, 1969 IN THIS MATTER, THE BOARD DIRECTED THAT THE APPLICANTS ADVISE THE BOARD IN WRITING ON OR BEFORE FEBRUARY 18TH, 1969 WHETHER IN THEIR OPINION THE BOARD WAS IN ERROR IN ASSUMING THAT THE FACTS OF THIS CASE ARE AS SET OUT IN THE BOARD'S DECISION OF FEBRUARY 11TH, 1969.

2. SINCE THE BOARD HAS NOT RECEIVED ANY COMMUNICATION FROM THE APPLICANTS AS DIRECTED, THE BOARD IS SATISFIED THAT PURSUANT TO THE PROVISIONS OF SECTION 46(2) OF THE LABOUR RELATIONS ACT THAT THIS APPLICATION IS UNTIMELY.

3. IN VIEW OF THESE CIRCUMSTANCES AND IN ACCORDANCE WITH THE PROVISIONS OF SECTION 46 OF THE BOARD'S RULES OF PROCEDURE, THE BOARD IS OF OPINION THAT THE APPLICANTS HAVE FAILED TO MAKE A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND THIS APPLICATION IS THEREFORE DISMISSED.

INDEXED ENDORSEMENTS - SECTION 65

14818-68-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1059 (COMPLAINANT) v. POWELL AGRI-SYSTEMS LIMITED (RESPONDENT).

BEFORE: H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS P.J. O'KEEFFE AND J.E.C. ROBINSON.

REASONS FOR THE DISSENT OF BOARD MEMBER J.E.C. ROBINSON:

FEBRUARY 3, 1969.

I AM IN AGREEMENT WITH MY COLLEAGUES THAT DAVID DOUGLAS AND DONALD WHITNEY SHOULD BE REINSTATED IN THE POSITIONS HELD BY THEM AT THE TIME OF THEIR DISCHARGE. I AM UNABLE, HOWEVER, TO AGREE WITH MY COLLEAGUES THAT DAVID DOUGLAS SHOULD RECEIVE ANY COMPENSATION FOR LOSS OF EARNINGS SUSTAINED BY HIM. IT WAS HIS DUTY, FOLLOWING HIS DISCHARGE, TO HAVE ATTEMPTED TO MITIGATE ANY DAMAGES WHICH HE MIGHT SUSTAIN AS A RESULT OF SUCH DISCHARGE. IN MY OPINION, THE APPLICANT HAS NOT ESTABLISHED THROUGH ITS EVIDENCE THAT DOUGLAS DID TAKE THE NECESSARY STEPS TO MITIGATE HIS DAMAGES. ACCORDINGLY, WHILE I WOULD HAVE REINSTATED DOUGLAS, I WOULD NOT HAVE DIRECTED THAT THE COMPANY PAY ANY COMPENSATION TO HIM FOR LOSS OF EARNINGS.

I AM IN AGREEMENT WITH MY COLLEAGUES THAT THE COMPLAINT AS IT RELATED TO WAYNE DAVIS, HAROLD MACCREADY AND RICHARD CROCKETT BE DISMISSED. I AM HOWEVER, UNABLE TO DIFFERENTIATE BETWEEN THE EVIDENCE WHICH THE APPLICANT SUBMITTED IN SUPPORT OF THEIR COMPLAINTS FROM THAT WHICH IT SUBMITTED IN SUPPORT OF DAVID CHAMBERS. IF MY COLLEAGUES ARE CORRECT THAT ON THE EVIDENCE THE COMPLAINT RELATING TO DAVIS, MACCREADY AND CROCKETT SHOULD BE DISMISSED (AND IN MY OPINION THEY ARE), IT SHOULD FOLLOW THAT ON THE SIMILAR EVIDENCE PRESENTED WITH RESPECT TO DAVID CHAMBERS, THE COMPLAINT, AS IT RELATES TO HIM, SHOULD ALSO BE DISMISSED.

15182-68-U: LOCAL UNION 46 - UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (COMPLAINANT) v. SENTINEL HEATING SERVICES LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS P.J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: WILLIAM SCOTT AND DAVE CLARK FOR THE COMPLAINANT; D. CHURCHILL-SMITH, GARNET WILSON AND GEORGE BELL FOR THE RESPONDENT.

DECISION OF THE BOARD:

FEBRUARY 3, 1969.

• • •

2. THIS IS A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSON, WILLIAM SCOTT, HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50 OF THE LABOUR RELATIONS ACT.

3. THE AGGRIEVED HAD BEEN EMPLOYED BY THE RESPONDENT FOR SOME TWO AND ONE HALF YEARS. THE EVIDENCE IS THAT DURING THAT TIME HE WAS INSTRUMENTAL IN ORGANIZING THE UNION AND HAD BEEN A MEMBER OF ITS BARGAINING COMMITTEE FROM THE TIME OF CERTIFICATION IN AUGUST OF 1966 UNTIL HIS DISCHARGE. IT WAS SAID THAT SCOTT HAD ASSUMED THE ROLE OF SHOP STEWARD AND THAT HE WAS PRESENT AT EVERY MEETING HELD BETWEEN THE RESPONDENT AND THE UNION SINCE THE DATE OF CERTIFICATION AND TOOK AN ACTIVE PART THEREIN.

4. IT WAS THE THEORY OF THE UNION THAT CERTAIN CHANGES IN THE COMPOSITION OF THE BARGAINING PERSONNEL OF THE RESPONDENT HAD BROUGHT ABOUT A COMPLETE CHANGE IN THE LATTER'S ATTITUDE TOWARD THE UNION AND THAT THIS CHANGE RESULTED IN THE DISMISSAL OF SCOTT AS ONE OF THE LEADERS OF THE UNION.

5. THE COMPANY CONTENDED THAT SCOTT WAS DISCHARGED BECAUSE OF A CHRONIC "POOR" ATTITUDE TOWARDS HIS WORK. NO FAULT WAS FOUND WITH THE TECHNICAL SIDE OF HIS WORK. THE COMPANY WAS DISSATISFIED WITH SCOTT'S ATTITUDE TOWARDS CERTAIN ASSIGNMENTS INCLUDING THE SERVICING OF SWIMMING POOLS WHICH HE HELD TO BE OUTSIDE THE SCOPE OF HIS JOB AND HIS REFUSAL TO SELL SPARE PARTS TO CUSTOMERS UNLESS THE COMPANY AGREED TO PAY HIM A COMMISSION. THE FINAL STRAW, THE COMPANY CONTENDED, WAS SCOTT'S QUESTIONING OF AN ASSIGNMENT AND HIS REFUSAL TO COME INTO THE OFFICE TO DISCUSS WITH THE COMPANY THE WHOLE PROBLEM.

6. HAVING REGARD TO ALL OF THE EVIDENCE, THE BOARD FINDS THAT THE UNION HAS NOT DISCHARGED THE ONUS UPON IT TO ESTABLISH THAT THE AGGRIEVED WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT. THE COMPLAINT IS THEREFORE DISMISSED.

15289-68-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) v. MURRAY BROS. LUMBER CO. LTD. (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS F.W. MURRAY AND A. MAIN.

APPEARANCES AT THE HEARING: M.J. SOMERVILLE, J.C. HORAN FOR THE COMPLAINANT, D.F.O. HERSEY, DOWDALL MURRAY FOR THE RESPONDENT.

DECISION OF THE BOARD: FEBRUARY 26, 1969.

1. THIS IS AN APPLICATION PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT. THE BOARD WAS ADVISED THAT THE COMPLAINTS WITH RESPECT TO MORRIS TOWNE, TOM ROCOSKIE AND KEN STRACK WERE WITHDRAWN. ON THE CONSENT OF BOTH PARTIES THE NAMES OF GUIDO GRUSCHWITZ AND EDWARD STEFFEN WERE ADDED TO THE LIST OF COMPLAINANTS.

2. THE EVIDENCE INDICATED THAT THE COMPLAINANT COMMENCED ITS ORGANIZATIONAL CAMPAIGN IN SEPTEMBER 1968, THAT IT CONTINUED INTO OCTOBER 1968, THAT THE RESPONDENT WAS AWARE OF THE COMPLAINANT UNION'S ACTIVITIES AND THAT MASS DISCHARGES OCCURRED DURING THE ORGANIZATIONAL CAMPAIGN. THERE WAS EVIDENCE THAT SOME OF THE DISCHARGED EMPLOYEES WERE SUMMARILY DISMISSED WITHOUT EXPLANATION AND FURTHER EVIDENCE INDICATING THAT THE DISCHARGES OCCURRED BECAUSE OF UNION ACTIVITY. HAVING REGARD TO ALL THE EVIDENCE, THE ONUS THEN SHIFTED TO THE RESPONDENT TO PROVIDE A CREDIBLE EXPLANATION FOR THE DISCHARGES. Retail, Wholesale and Department Store Union, AFL:CIO:CLC AND NATIONAL AUTOMATIC VENDING Co. LTD. (1963) 63 CLLC 1161.

3. THE RESPONDENT DENIED THAT THE DISCHARGES OCCURRED BECAUSE OF UNION ACTIVITY AND ALLEGED AS THE FOUNDATION OF ITS CASE THAT LAY OFFS WERE "PART OF A GENERAL LAY OFF OF EMPLOYEES WHICH COMMENCED IN AUGUST AND CONTINUES TO DATE AND WHICH HAS RESULTED IN A DECREASE IN PRODUCTION". HAVING REGARD TO THE EVIDENCE AND ARGUMENT, IF THE RESPONDENT IS UNABLE TO DEMONSTRATE A DECREASE IN PRODUCTION WHICH WOULD WARRANT THE DISCHARGES THEN APART FROM UNION ACTIVITY THERE IS NO OTHER COGENT REASON FOR THE MASS DISCHARGE.

4. ALICE WERNHAM WHO WORKS IN THE RESPONDENT'S OFFICE WITH THE PRESIDENT AND SECRETARY-TREASURER TESTIFIED ON BEHALF OF THE RESPONDENT AND STATED; "I DON'T BELIEVE THERE WERE EVER THIS MANY MEN LAID OFF AT ONCE" MRS. WERNHAM THEN PRODUCED EXHIBIT 1 WHICH SHE TESTIFIED WAS A LIST OF COMPARATIVE LUMBER SHIPMENTS IN BOARD FEET FOR THE MONTHS OF SEPTEMBER, OCTOBER AND NOVEMBER IN THE YEARS 1966, 1967 AND 1968. ONE OF THE COMPARISONS SHOWN ON EXHIBIT 1 WAS THE SHIPMENTS WITH RESPECT TO MAPLE. MR. DOWDALL MURRAY, AN OFFICER AND DIRECTOR OF THE RESPONDENT, TESTIFIED THAT THE LACK OF A MARKET FOR MAPLE WAS ONE OF THE SIGNIFICANT FACTORS CAUSING THE DECLINE IN BUSINESS AND THE SUBSEQUENT LAY OFFS. HOWEVER, A COMPARISON OF THE MAPLE SHIPMENTS FOR OCTOBER AND NOVEMBER 1967 AS COMPARED TO OCTOBER AND NOVEMBER 1968 INDICATE THAT THE MAPLE SHIPMENTS IN 1968 INCREASED OVER THOSE SHIPMENTS IN 1967. IN ADDITION, EXHIBIT 1 ALSO INDICATES VARIOUS FLUCTUATIONS IN SHIPMENTS FOR OTHER PERIODS IN 1966, 1967 AND 1968. IF THE RESPONDENT'S CASE IS SUPPORTED BY EXHIBIT 1 THEN THE FLUCTUATIONS IN BUSINESS WOULD HAVE DEMANDED LAY OFFS TO HAVE OCCURRED IN OTHER

YEARS BECAUSE THERE WERE GREATER DOWNWARD FLUCTUATIONS IN SOME OF THOSE YEARS THAN IN THE PERIOD WHICH IS IN ISSUE. FOR EXAMPLE, THERE WAS A DECREASE IN SHIPMENTS FROM SEPTEMBER 1966 TO OCTOBER 1966 OF APPROXIMATELY 196,000 BOARD FEET; WHILE THE DECREASE FROM OCTOBER 1968 TO NOVEMBER 1968 AMOUNTED TO ONLY 127,000 BOARD FEET; HOWEVER, THE EVIDENCE INDICATED THAT THERE WAS NO MASS LAY OFF DURING SEPTEMBER OR OCTOBER 1966. IN VIEW OF THE TESTIMONY WITH RESPECT TO LAY OFFS, WE CONCLUDE THAT THE RESPONDENT'S POSITION THAT IT LAID OFF EMPLOYEES BASED ON THE DECREASE IN SHIPMENTS IS NOT SUPPORTED BY EXHIBIT 1.

5. MR. MURRAY TESTIFIED THAT EXHIBIT 1 SHOULD ASSIST IN DETERMINING LAY OFFS. HOWEVER, HE ALSO TESTIFIED THAT EXHIBIT 1 IS A SALES LIST (MRS. WERNHAM HAD TESTIFIED THAT IT WAS A LIST OF COMPARATIVE SHIPMENTS) AND DOES NOT RELATE TO PRODUCTION BUT THAT LAY OFFS WERE BASED ON BOTH PRODUCTION AND SALES. HIS TESTIMONY WITH RESPECT TO MAPLE BEING A SIGNIFICANT FACTOR WOULD ONLY ASSIST IN CONTRADICTING THE RESPONDENT'S POSITION AS WE INDICATED, AND ALTERNATIVELY, IF THE PRODUCTION IS AS IMPORTANT AS MR. MURRAY STATES THEN EXHIBIT 1 BY ITSELF IS NOT SUFFICIENT TO SUBSTANTIATE THE RESPONDENT'S POSITION BECAUSE IT DEALS ONLY WITH SALES.

6. IF EXHIBIT 1 IS DISCOUNTED WE ARE LEFT WITH THE GENERAL STATEMENTS OF MR. MURRAY ATTESTING TO A GENERAL DECLINE IN THE HARDWOOD MARKET WHICH HAD BECOME OBVIOUS TO HIM IN MAY OR JUNE OF 1968. NOT WITHSTANDING THIS APPARENT DECLINE 12 OR 15 STUDENTS HAD BEEN HIRED BY THE RESPONDENT DURING THE SUMMER OF 1968.

7. IN ASSESSING THE RESPONDENT'S EVIDENCE WE FIND THE SAME TO BE INCOMPLETE. WE ARE FURTHER OF THE OPINION FROM THE EVIDENCE THAT THERE WAS AVAILABLE TO THE RESPONDENT MORE COMPREHENSIVE AND COMPARATIVE RECORDS TO SUBSTANTIATE ITS POSITION WHICH WERE NOT PRODUCED AT THE HEARING.

8. WE THEREFORE FIND THE RESPONDENT'S EVIDENCE DOES NOT DEMONSTRATE A DECREASE IN PRODUCTION WARRANTING THE DISCHARGES AND ACCORDINGLY WE DETERMINE THAT THE RESPONDENT SHALL FORTHWITH, WITH THE EXCEPTION OF EDWARD STEFFEN, REINSTATE THE EMPLOYEES HEREINAFTER REFERRED TO IN ACCORDANCE WITH THE TERMS INDICATED.

9. EDWARD STEFFEN HAD BEEN EMPLOYED BY THE RESPONDENT BUT HAD LAST WORKED ON OCTOBER 3RD AS A RESULT OF AN INJURY HE RECEIVED AT HIS HOME. HE WAS SUBSEQUENTLY HOSPITALIZED AND WAS RECUPERATING AT HIS HOME ON OCTOBER 24TH WHEN HE RECEIVED BY MAIL HIS UNEMPLOYMENT INSURANCE BOOK AND A CHEQUE FROM THE COMPANY.

10. WE FIND THAT MR. STEFFEN WAS DISMISSED PRIOR TO THE MASS DISCHARGES THAT OCCURRED, AND THAT THERE IS NO EVIDENCE RELATING HIS DISCHARGE TO UNION ACTIVITY. WE FURTHER FIND THAT MR. STEFFEN'S ABSENTEEISM IN EARLY OCTOBER, CONSIDERED IN THE LIGHT OF HIS TOTAL WORK RECORD, PRECIPITATED HIS DISCHARGE. ACCORDINGLY, THE COMPLAINT WITH RESPECT TO MR. STEFFEN IS DISMISSED.

11. WE TURN NOW TO THE QUESTION OF THE TERMS OF REINSTATEMENT. THE LAW IMPOSES A DUTY UPON A PERSON TO TAKE ALL REASONABLE STEPS TO MITIGATE THE LOSS CAUSED BY BREACH OF CONTRACT AND PREVENTS PERSONS FROM CLAIMING COMPENSATION FOR ANY PART OF THE DAMAGE WHICH IS DUE TO HIS NEGLECT TO DO SO. THIS PRINCIPLE EXTENDS TO PERSONS WHOSE EMPLOYMENT RELATIONSHIP IS WRONGFULLY TERMINATED. THE QUESTION OF WHETHER A PERSON HAS TAKEN REASONABLE STEPS TO MITIGATE THE DAMAGE IS ONE OF FACT DEPENDENT UPON THE PARTICULAR CIRCUMSTANCES. THESE PRINCIPLES ARE APPLICABLE TO COMPLAINTS MADE PURSUANT TO SECTION 65(1) OF THE LABOUR RELATIONS ACT. THE COMPLAINANT MUST TAKE REASONABLE STEPS TO MITIGATE HIS LOSS AND WHAT IS REASONABLE IS A QUESTION OF FACT IN EACH CASE.

12. IN ASSESSING THE PRESENT FACT SITUATION IN LIGHT OF THE PRINCIPLES STATED, WE FIND THAT GUIDO GRUSHWITZ AND ED ZILNEY HAVE NOT ACTED REASONABLY TO MITIGATE THEIR LOSS BECAUSE THEY MADE NO EFFORTS WHATSOEVER, DURING THEIR PERIOD OF UNEMPLOYMENT, TO OBTAIN OTHER EMPLOYMENT. ACCORDINGLY, THEY ARE REINSTATED BUT WITHOUT ANY COMPENSATION.

13. WE ARE FURTHER SATISFIED THAT THE RESPONDENT CUSTOMARILY SHUT DOWN OR SLOWED DOWN ITS OPERATIONS FOR PERIOD DURING NOVEMBER TO ENABLE THEIR SUPERVISOR STAFF AND EMPLOYEES TO GO HUNTING AND THAT FOR THIS "HUNTING PERIOD" EMPLOYEES RECEIVED NO COMPENSATION. WE FIND THAT IN 1968 THAT THIS WAS A TWO WEEK PERIOD AND ACCORDINGLY IN ASSESSING THE COMPENSATION FOR NOVEMBER 1968, WITH RESPECT TO THE REMAINING EMPLOYEES WE ARE NOT ALLOWING ANY COMPENSATION FOR THAT TWO WEEK HUNTING PERIOD.

14. THE REMAINING EMPLOYEES ARE REINSTATED TO THEIR EMPLOYMENT WITH THE FOLLOWING COMPENSATION:

(a) RONALD BLANEY (\$12.25 PER DAY) TOTAL COMPENSATION - \$514.70

RONALD BLANEY'S WORK RECORD INDICATES THAT HE DID NOT CUSTOMARILY WORK FOR SOME TIME EACH MONTH AND WE FIND THAT THIS WAS ON THE AVERAGE OF ABOUT 5 DAYS EACH MONTH AND ACCORDINGLY THE CALCULATION HAS BEEN MADE ON THAT BASIS.

(B) TED DOMBROSKIE (\$13.50 PER DAY) TOTAL COMPENSATION - \$636.00

TED DOMBROSKIE WAS HOSPITALIZED FOR A BACK PROBLEM DURING NOVEMBER. ACCORDINGLY, WE FIND THAT HE IS ENTITLED TO COMPENSATION FOR ONLY ONE WEEK IN NOVEMBER.

(C) FRANCIS LUCKASAVITCH (\$12.50 PER DAY) TOTAL COMPENSATION - \$601.50

FRANCIS LUCKASAVITCH EARNED APPROXIMATELY \$50.00 DURING THE PERIOD HE WAS UNEMPLOYED WHICH HAS BEEN DEDUCTED FROM THE TOTAL COMPENSATION

(D) LEONARD DOMBROSKIE (\$12.50 PER DAY) TOTAL COMPENSATION - \$390.00

LEONARD DOMBROSKIE'S WORK RECORD INDICATES THAT HE DID NOT CUSTOMARILY WORK FOR SOME TIME EACH MONTH AND WE FIND THAT THIS WAS ON THE AVERAGE OF ABOUT 9 DAYS EACH MONTH AND ACCORDINGLY THE CALCULATION HAS BEEN MADE ON THAT BASIS

(E) MIKE LUNDY (\$11.75 PER DAY) TOTAL COMPENSATION - \$540.00

MIKE LUNDY EARNED \$82.00 DURING THE PERIOD HE WAS UNEMPLOYED WHICH HAS BEEN DEDUCTED FROM THE TOTAL COMPENSATION.

(F) KEN TREBENSKI (\$11.25 PER DAY) TOTAL COMPENSATION - \$596.00

(G) IN ACCORDANCE WITH THE AGREEMENT OF THE PARTIES AS TO THE FACTS, WE FIND MARTIN STEMPLECOOKIE IS TO BE REINSTATED WITH THE AMOUNT OF COMPENSATION TO BE AGREED BETWEEN THE PARTIES AND FAILING AGREEMENT THEN THE PARTIES SHALL BE ENTITLED TO MAKE APPLICATION TO THE BOARD TO FIX THE COMPENSATION.

15. THE RESPONDENT AND THE COMPLAINANT SHALL MEET FORTHWITH FOR THE PURPOSE OF AGREEING ON THE AMOUNT OF LOSS OF EARNINGS AND THE EMPLOYMENT BENEFITS SUSTAINED BY THE COMPLAINANTS BETWEEN THE DATE OF THE HEARING ON JANUARY 29TH, 1969 AND THE DATE OF REINSTATEMENT BY THE RESPONDENT. IN DEFAULT OF AGREEMENT BETWEEN THE PARTIES WITHIN SEVEN DAYS FROM THE DATE HEREOF AS TO THE LOSS OF EARNINGS AND EMPLOYMENT BENEFITS SUSTAINED AND PAYABLE TO THE COMPLAINANTS, EITHER PARTY MAY APPLY TO HAVE THE BOARD MAKE SUCH DETERMINATION OF THE LOSS OF EARNINGS AND EMPLOYMENT BENEFITS SUSTAINED AND WHICH ARE PAYABLE.

15309-68-U: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA
(UE) (COMPLAINANT) v. ITT CANADA LTD. (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS
P.J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: R. RUSSELL AND ROBERT HACK FOR THE
COMPLAINANT; B.H. STEWART AND CLAUDE PARENT FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN, RORY F. EGAN AND BOARD MEMBER

J.E.C. ROBINSON: FEBRUARY 24, 1969.

1. THIS IS A COMPLAINT BROUGHT PURSUANT TO SECTION 65
OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT ALLEGES
THAT THE AGGRIEVED PERSON, ROBERT ANDREW HACK, HAS BEEN DEALT
WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION
50 OF THE ACT.

2. HACK WAS HIRED AS A TEMPORARY EMPLOYEE ON SEPTEMBER
26, 1968. HE WAS HIRED AS A GENERAL LABOURER, AND IT WAS CON-
TEMPLATED THAT HE WOULD BE EMPLOYED FOR A FEW DAYS ONLY. HE WAS
RETAINED, HOWEVER, FOR SOME FIVE WEEKS AND WAS DISCHARGED ON
OCTOBER 31, 1968 ON ONE HOUR'S NOTICE.

3. ON OCTOBER THE 18TH, HACK WAS ASKED TO GO TO A UNION
MEETING; HE ATTENDED THE MEETING AND JOINED THE UNION. ON
OCTOBER THE 29TH, HE ATTENDED A FURTHER MEETING AND WAS ELECTED
TO ATTEND THE CERTIFICATION APPLICATION HEARING BEFORE THE
ONTARIO LABOUR RELATIONS BOARD. IT SHOULD BE NOTED THAT TWO
OTHER EMPLOYEES WERE ELECTED AT THE SAME TIME FOR THE SAME PUR-
POSE. THE MEETING OF OCTOBER 29TH, WAS ADVERTISED BY A PRINTED
NOTICE DISTRIBUTED BY THE UNION TO EMPLOYEES. A PRIOR NOTICE
DATED OCTOBER 22ND HAD ADVISED THE EMPLOYEES THAT ON THAT DATE
THE COMPANY HAD RECEIVED THE NOTICE OF APPLICATION FROM THE
LABOUR RELATIONS BOARD. THERE CAN BE NO QUESTION THEN THAT THE
COMPANY WAS WELL AWARE OF THE UNION'S ACTIVITIES AT THE TIME THE
DISCHARGE TOOK PLACE. THIS IS NOT TO SAY, HOWEVER, THAT IT MAY
BE CONCLUDED FROM THE FOREGOING, STANDING ALONE, THAT THE COM-
PANY WAS AWARE OF HACK'S ELECTION OR INDEED OF HIS MEMBERSHIP IN
THE UNION.

4. THE EVIDENCE IS THAT IT HAS BEEN THE POLICY OF THE
RESPONDENT TO TERMINATE TEMPORARY EMPLOYEES ON ONE HOUR'S NOTICE.
THE POLICY WITH RESPECT TO PERMANENT EMPLOYEES WHO ARE HOURLY
RATED, IS THAT THEY BE GIVEN A WEEK'S NOTICE. THE UNION ARGUED
THAT WHAT IT DEEMED TO BE THE PRECIPITOUS ACTION OF THE COMPANY
IN DISMISSING WHAT IT CONTENDED WAS A PERMANENT EMPLOYEE ON ONLY

AN HOUR'S NOTICE, WAS ONE OF THE FUNDAMENTAL AND CRITICAL INCIDENTS WHICH, WHEN COUPLED WITH OTHER CIRCUMSTANCES, SHOULD INDUCE THE BOARD TO INFER THAT THE TRUE REASON THE COMPANY DISCHARGED HACK WAS BECAUSE OF HIS UNION AFFILIATION. IN FACT THE UNION MADE A CARDINAL ISSUE OF THE EMPLOYMENT STATUS OF HACK AT THE TIME OF HIS DISCHARGE. IT SUGGESTED THAT IF THE BOARD WERE TO FIND THAT HACK WAS A PERMANENT EMPLOYEE "THE COMPANY'S CASE FALLS BY THE WAYSIDE".

5. THERE WAS A GREAT DEAL OF EVIDENCE DIRECTED TO THE QUESTION AS TO WHETHER HACK WAS A TEMPORARY OR PERMANENT EMPLOYEE.

6. A FURTHER MATTER UPON WHICH RELIANCE WAS PLACED BY THE COMPLAINANT WAS AN ALLEGATION THAT THE AGGRIEVED HAD BEEN PROMPTLY REPLACED BY A NEW EMPLOYEE HIRED FOR THAT PURPOSE.

7. THE BOARD HAS CAREFULLY REVIEWED ALL OF THE EVIDENCE HAVING TO DO WITH THE QUESTION OF THE EMPLOYMENT STATUS OF HACK. A CONSIDERABLE AMOUNT OF THIS EVIDENCE CONSISTED OF DOCUMENTS HAVING TO DO WITH THE HIRING OF EMPLOYEES BY MEANS OF REQUISITIONS FILED WITH THE PERSONNEL DEPARTMENT SETTING OUT THE REQUIREMENTS AND QUALIFICATIONS OF EMPLOYEES SOUGHT. ON THE BASIS OF THIS DOCUMENTARY EVIDENCE AND THE ORAL TESTIMONY GIVEN AT THE HEARING, THE BOARD FINDS THAT HACK CONTINUED UNTIL THE DATE OF HIS TERMINATION TO BE A TEMPORARY EMPLOYEE INSOFAR AS THE COMPANY WAS CONCERNED. BECAUSE IT WAS SUGGESTED TO HACK THAT HE FILE AN APPLICATION FOR PERMANENT EMPLOYMENT AND BECAUSE OF WHAT WE FIND WAS A MISTAKEN ASSIGNMENT OF A PERMANENT NUMBER TO HIM, IT MAY VERY WELLBE THAT HACK WAS UNDER THE IMPRESSION THAT HE WAS A PERMANENT EMPLOYEE. THIS, HOWEVER, WAS A MISTAKEN ASSUMPTION ON HIS PART.

8. IT WAS, AS NOTED BEFORE, SUGGESTED BY THE UNION THAT THE COMPANY HAD IMMEDIATELY REPLACED HACK WITH ANOTHER EMPLOYEE ON THE DATE OF THE FORMER'S DISCHARGE. THE EVIDENCE INDICATES THAT A NEW EMPLOYEE NAMED PALLISTER WAS EMPLOYED BY THE COMPANY. HE WAS INTERVIEWED BY THE COMPANY ON THE DATE OF HACK'S DISCHARGE AND COMMENCED WORK SOME DAYS LATER. THE REQUISITION FOR THE JOB FILLED BY PALLISTER HAD BEEN FILED ON THE 24TH SEPTEMBER, 1968 WHICH WAS, OF COURSE, TWO DAYS PRIOR TO THE HIRING OF MR. HACK. THE REQUISITION WAS NECESSITATED BECAUSE THE EMPLOYEE, PAQUETTE, WHO FORMERLY OCCUPIED THE JOB (WHICH WAS MACHINE MAINTENANCE MAN) HAD DECLINED TO MOVE FROM MONTREAL, WHERE HE HAD BEEN EMPLOYED BY THE COMPANY, TO THEIR NEW PLANT AT GUELPH. THE JOB PREVIOUSLY OCCUPIED BY PAQUETTE REQUIRED EXPERIENCE IN MACHINE MAINTENANCE WHICH WAS NOT REQUIRED IN THE JOB WHICH HACK HAD BEEN DOING. THE BOARD IS SATISFIED THAT PALLISTER WAS NOT HIRED AS A REPLACEMENT FOR HACK AND THAT HE WAS REQUIRED TO DO A TYPE OF WORK WHICH HACK HAD NOT BEEN HIRED TO PERFORM. THE COMPANY HAD HOPED TO HIRE PALLISTER AT \$2.00 PER HOUR, BUT THE EVIDENCE IS THAT PALLISTER WOULD NOT ACCEPT THAT RATE AND IT WAS NEGOTIATED UPWARDS.

9. THE EVIDENCE, THEREFORE, FAILS TO SUPPORT THE TWO MAIN PROPOSITIONS ADVANCED BY THE UNION FROM WHICH, HAVING REGARD TO THE EVIDENCE WITH RESPECT TO HACK'S UNION MEMBERSHIP AND ELECTION, IT SUGGESTS INFERENCES SHOULD BE DRAWN IN CONFIRMATION OF ITS POSITION. IN ADDITION THERE IS NO DIRECT EVIDENCE, NOR ANY OTHER EVIDENCE FROM WHICH AN INFERENCE MIGHT BE DRAWN, THAT THE COMPANY TOOK AN ADVERSE POSITION WITH RESPECT TO THE UNION. THERE IS ALSO A LACK OF EVIDENCE INDICATING THAT THE COMPANY HAD ANY KNOWLEDGE THAT HACK WAS A MEMBER OF THE UNION AT THE TIME OF HIS TERMINATION.

10. IN THE RESULT, THEREFORE, THE BOARD FINDS THAT THE COMPLAINANT HAS NOT ADDUCED EVIDENCE OF A SUBSTANTIAL NATURE FROM WHICH THE BOARD CAN BE SATISFIED BY REASONABLE INFERENCE OR DIRECT EVIDENCE THAT HACK WAS DISCHARGED CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT.

11. THE COMPLAINT IS ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER P.J. O'KEEFFE: FEBRUARY 24, 1969.

AT APPROXIMATELY 11.45 A.M. ON OCTOBER 31, 1968, MR. ROBERT ANDREW HACK, THE AGGRIEVED EMPLOYEE, WAS DISMISSED BY HIS EMPLOYER THE RESPONDENT COMPANY. HACK WAS GIVEN FIFTEEN MINUTES' NOTICE OF HIS DISMISSAL. HE WAS DISMISSED IN THE MIDDLE OF THE DAY WITHOUT PRIOR WARNING. THIS ABRUPT DISMISSAL DID NOT COME ABOUT BECAUSE OF A PARTICULAR INCIDENT AT THAT TIME. THE EVIDENCE OF THE RESPONDENT WAS TO THE EFFECT THAT HACK'S EMPLOYMENT WITH THE COMPANY WAS THE SUBJECT OF A SERIOUS MANAGEMENT DISCUSSION SOME TWO HOURS BEFORE HE WAS DISMISSED. IT WAS THEN DECIDED BY TOP MANAGEMENT IN THE PLANT THAT ROBERT ANDREW HACK HAD TO GO.

THE EVIDENCE ADDUCED FROM TWO FELLOW EMPLOYEE WITNESSES CALLED BY THE COMPLAINANT WAS THAT HACK WAS A GOOD CONCIENTIOUS EMPLOYEE, WHO GOT ALONG WELL WITH EVERYONE IN THE PLANT. THIS EVIDENCE WAS REINFORCED BY THE EVIDENCE OF THE RESPONDENT'S WITNESSES. IT IS CLEAR FROM THE EVIDENCE THAT HACK WAS IN EVERY WAY A DESIRABLE EMPLOYEE.

HACK WAS NOT DISMISSED BECAUSE HE WAS INSUBORDINATE OR THAT HE FAILED TO CARRY OUT HIS VARIOUS WORK ASSIGNMENTS OR BECAUSE HE WAS A POOR WORKER.

HACK WAS HIRED AS A TEMPORARY EMPLOYEE ON SEPTEMBER 26, 1968. HE WAS TOLD AT THAT TIME THAT HE WOULD HAVE TWO DAYS WORK WITH THE COMPANY. ON FRIDAY, SEPTEMBER 27, HE WAS ASKED BY MANAGEMENT IF HE WOULD LIKE TO WORK FOR ANOTHER WEEK, HE AGREED TO THIS REQUEST. SOMETIME DURING THIS ADDITIONAL WEEK'S WORK, HE COMPLETED

AN APPLICATION FORM FOR PERMANENT EMPLOYMENT WITH THE COMPANY. TWO DAYS AFTER HE HAD HANDED IN THE PERMANENT EMPLOYMENT FORMS, HE WAS GIVEN A TIME CARD WITH CLOCK NUMBER 4101. PRIOR TO THIS, HIS WORK TIME WAS RECORDED ON A WEEKLY TIME SHEET AND HE DID NOT HAVE A TIME CARD. HACK ADMITS THAT HE WAS NOT TOLD THAT HE WAS GIVEN A PERMANENT JOB, HE ASSUMED HE WAS PERMANENT BECAUSE HE HAD COMPLETED A FORM FOR PERMANENT EMPLOYMENT AND HAD BEEN AS-SIGNED A PERMANENT TIME CARD. THE RESPONDENT'S WITNESSES ADMIT THAT THE TIME CARD NUMBER 4101 IS A PERMANENT EMPLOYEE NUMBER. TEMPORARY EMPLOYEES ARE DISTINGUISHABLE FROM THE PERMANENT EM-PLOYEES BECAUSE THEY HAVE A DIFFERENT SERIES OF EMPLOYEE NUMBERS AND SUCH NUMBERS HAVE WITH THEM THE PREFIX 'T' WHICH CLEARLY IN-DICATES THAT THEIR EMPLOYMENT STATUS IS TEMPORARY.

THE RESPONDENT, WHILE ADMITTING THAT HACK'S NUMBER WAS THAT OF A PERMANENT EMPLOYEE, CONTENDED THAT HE WAS GIVEN THIS NUMBER AND HAD THIS TIME CARD IN ERROR.

THE MATTER OF PERMANENT AS OPPOSED TO TEMPORARY EMPLOY-MENT STATUS WAS IMPORTANT TO THE COMPLAINANT UNION BECAUSE OF THE ONUS ON IT TO ESTABLISH ITS CASE. THE PRACTICE OF THE RESPONDENT COMPANY WAS TO GIVE ONE WEEK'S NOTICE OF SEVERANCE TO ITS PERMAN-ENT EMPLOYEES AS OPPOSED TO ONE HOUR'S NOTICE TO ITS TEMPORARY EMPLOYEES. THE MATTER OF PERMANENT AS OPPOSED TO TEMPORARY EM-PLOYMENT STATUS WAS ALSO IMPORTANT TO THE RESPONDENT COMPANY BE-CAUSE THE ALMOST INSTANT DISMISSAL OF HACK COULD NOT BE EXPLAINED AWAY IF IT WERE ESTABLISHED THAT HE WAS A PERMANENT EMPLOYEE.

THE RESPONDENT COMPANY RELIED HEAVILY ON THE EVIDENCE OF JAMES FORD, THE PAYMASTER, TO ESTABLISH THAT THE ASSIGNMENT OF A PERMANENT EMPLOYEE TIME CARD TO HACK WAS AN ERROR ON THE PART OF A CLERK IN THE MAIN OFFICE. CONSIDERING THE LESS THAN STRAIGHT FOR-WARD EVIDENCE OF THIS PAYMASTER AND HIS OBVIOUS CONFUSION IN HIS EVIDENCE WITH REGARD TO DATES AND DISCUSSIONS WITH HACK ON THE ASSIGNED PERMANENT EMPLOYEE NUMBER, OBVIOUS CONTRADICTIONS IN HIS EVIDENCE, AND CORRECTIONS OF CERTAIN OF HIS PREVIOUS EVIDENCE WHILE IN THE WITNESS BOX, I HAVE NO HESITATION IN REJECTING HIS EVIDENCE IN ITS ENTIRETY. I WOULD TRUST THAT HE KEEPS HIS BOOKS IN BETTER ORDER THAN HIS EVIDENCE UNDER OATH.

OF ALL OF THE EVIDENCE ADDUCED BY THE RESPONDENT COMPANY, THE ONE MOST TELLING PART WAS THE EVIDENCE OF ROBERT QUEVILLION, MANAGER OF MANUFACTURING. IN HIS EVIDENCE WE GET TO THE ROOT CAUSE OF THE ALLEGED COMPANY REASON FOR THE DISMISSAL OF HACK. HE SAID THAT HACK WAS TERMINATED BECAUSE HE, QUEVILLION, HAD A CALL FROM HIS IMMEDIATE SUPERIOR AND THAT HE, QUEVILLION, COULD NOT JUSTIFY HACK'S CONTINUED EMPLOYMENT ANY LONGER BECAUSE OF THE NECESSITY OF LIVING WITHIN THE COMPANY'S BUDGET. SO HACK, A TWO DOLLAR AN HOUR EMPLOYEE, WAS DISMISSED BECAUSE OF THE BUDGETARY REQUIREMENT OF THE RESPONDENT COMPANY.

I.T.T. CANADA LTD., THE RESPONDENT IN THIS CASE, IS NO FLY BY NIGHT COMPANY IN THIS COUNTRY; IT IS NOT A SMALL INSIGNIFICANT COMPANY. IT IS RECOGNIZED IN THE BUSINESS WORLD AS A COMPANY OF SOME CONSIDERABLE SUBSTANCE. IT HAD RECENTLY MOVED ITS OPERATIONS FROM MONTREAL TO GUELPH. AS A RESULT OF THIS MOVE, IT NECESSITATED A LARGE SCALE TRAINING PROGRAMME OF GROUPS OF NEW ONTARIO EMPLOYEES TO PREPARE FOR ITS OPERATIONS IN ONTARIO. ON THE MORNING OF OCTOBER 31, 1968, THE DATE OF HACK'S DISMISSAL, THE TOP COMPANY OFFICIALS OF THIS COMPANY MET TO DISCUSS THE FORTUNES OF THE COMPANY. IT WAS FOUND, ACCORDING TO THE EVIDENCE, THAT THE COMPANY WAS IN A VERY TIGHT BUDGET SITUATION. THE DECISION OF THIS GROUP WAS TO CUT BACK TO SOME EXTENT TO LIVE WITHIN THE BUDGET. IT WAS DECIDED AT THIS MEETING TO DISMISS ROBERT ANDREW HACK FORTHWITH, PRINCIPALLY BECAUSE OF THE BUDGET SITUATION. THIS IS THE ROOT EVIDENCE TENDERED TO THE BOARD IN SUPPORT OF THE COMPANY'S DECISION TO FIRE HACK. EVENTS MOVED RAPIDLY FROM THERE-ON-IN; THE NECESSARY DISMISSAL FORM WAS PREPARED SIGNED BY THREE OF THE COMPANY'S TOP OFFICIALS TERMINATING HACK'S EMPLOYMENT FORTHWITH. HACK WAS NOT TO COMPLETE HIS FULL DAY'S WORK. HE WAS NOT TO BE GIVEN REASONABLE NOTICE OF HIS DISMISSAL, BUT WAS TO BE TERMINATED FROM HIS EMPLOYMENT WITH FIFTEEN MINUTES' NOTICE IN THE MIDDLE OF THE DAY. THIS DISMISSAL IN THE MIDDLE OF THE DAY REPRESENTED A CASH SAVING TO THE COMPANY OF APPROXIMATELY EIGHT DOLLARS (4 HOURS AT \$2.00 PER HOUR).

THE FURTHER EVIDENCE OF THE COMPANY IN THIS CASE WAS TO THE EFFECT THAT ON THE SAME DAY OF THE DISMISSAL OF HACK, AN EMPLOYEE PALLISTER WAS INTERVIEWED AND HIRED ON THE SAME AFTERNOON. THE COMPANY SAID THAT PALLISTER WHO WAS HIRED ALSO AT \$2.00 AN HOUR HAD PARTICULAR SKILLS AND WAS NOT HIRED TO REPLACE HACK. THE COMPANY PRESENTED DOCUMENTS TO ESTABLISH THAT THE HIRING OF PALLISTER IN HIS PARTICULAR CLASSIFICATION WAS SOMETHING THAT WAS DECIDED SEVERAL WEEKS BEFORE IT TOOK PLACE. PALLISTER, ALSO A TWO DOLLAR AN HOUR EMPLOYEE, WAS TO REPLACE A CERTAIN SKILLED EMPLOYEE WHO REFUSED TO TRANSFER WITH THE COMPANY FROM MONTREAL. THE EVIDENCE OF TWO OF THE RESPONDENT COMPANY EMPLOYEES CALLED BY THE COMPLAINANT WAS TO THE EFFECT THAT PALLISTER HAD REPLACED HACK AND WAS PERFORMING CERTAIN OF THE DUTIES OF HACK. THEY STATED THAT PALLISTER WAS NOT PERFORMING SUCH DUTIES AS ABLY AS HACK. SO HERE WE HAVE A CONFLICT OF EVIDENCE BETWEEN THE COMPANY AND TWO OF ITS EMPLOYEES WHO WERE IN A POSITION TO COMPARE THE DUTIES OF THE NEW EMPLOYEE PALLISTER AS OPPOSED TO THE DISMISSED EMPLOYEE HACK.

THE QUICK BACKGROUND TO THIS CASE AS UNFOLDED BY THE EVIDENCE WAS THAT THE COMPLAINANT UNION WAS ORGANIZING THE EMPLOYEES OF THE RESPONDENT. LEAFLETS URGING THE EMPLOYEES TO JOIN THE UNION WERE DISTRIBUTED AT THE PLANT. SOME EMPLOYEES WERE PRO UNION WHILE OTHERS WERE ANTI UNION AND STILL OTHERS WERE NEUTRAL. ROBERT ANDREW HACK WAS APPROACHED BY SOME GIRLS WORKING IN THE PLANT TO JOIN THE UNION. HE JOINED THE UNION AND HE IN TURN WORKED TO CONVINCE OTHER EMPLOYEES WHO HAD NOT YET JOINED THE UNION TO JOIN, ALONG WITH HIMSELF AND OTHERS. HE ATTENDED A UNION MEETING ON OCTOBER 29TH AND

DURING THIS MEETING WAS ELECTED TO REPRESENT THE UNION AT A FORTHCOMING APPEARANCE ON THE UNION'S APPLICATION FOR CERTIFICATION BEFORE THE ONTARIO LABOUR RELATIONS BOARD. TWO DAYS AFTER HIS ELECTION AT THE UNION MEETING, HE WAS FIRED BY HIS EMPLOYER IN THE MIDDLE OF HIS WORKING DAY AND WITH ONLY FIFTEEN MINUTES' NOTICE. HE IS ABRUPTLY DISMISSED IN THE MIDDLE OF THE DAY AS IF HE WERE AN EMPLOYEE WHO HAD JUST BEEN CAUGHT WITH HIS HAND IN THE COMPANY'S COFFERS. DISMISSED IN SUCH WAY AND MANNER AS IF HE HAD COMMITTED A CRIMINAL ACT OR HE HAD REFUSED POINT BLANK TO PERFORM HIS REQUIRED DUTIES. HE WAS SUMMARILY DISMISSED AS IF HE WERE SOMETHING LESS THAN A HUMAN PERSON WITH NORMAL SENSITIVE HUMAN FEELINGS.

FOR NO OBVIOUS REASON HACK WAS FIRED. WE HAVE LEARNED FROM THE EVIDENCE OF THE RESPONDENT COMPANY THAT HE WAS FIRED BECAUSE OF THE CONCERN WITH REGARD TO THE COMPANY'S FINANCIAL SITUATION, PARTICULARLY WITH REGARD TO THE COMPANY BUDGET. DESPITE THE COMPANY'S CONCERN WITH THEIR BUDGET THEY, NEVERTHELESS, ON THE SAME AFTERNOON THAT THEY FIRED HACK, ENGAGED ANOTHER EMPLOYEE TO DO, EVEN ON THE COMPANY'S OWN EVIDENCE, SOME OF THE DUTIES PERFORMED BY HACK. THE SUBSTANTIAL EVIDENCE ADDUCE BY THE COMPLAINANT WAS THAT THE NEW EMPLOYEE WAS ENGAGED TO REPLACE ROBERT ANDREW HACK.

IT IS AN INSULT TO OUR INTELLIGENCE TO ASK US TO ACCEPT THE RESPONDENT COMPANY'S REASON FOR THE DISMISSAL OF HACK; NOT ONLY ARE THE REASONS GIVEN BY THE COMPANY FOR THE DISMISSAL OF HACK UNACCEPTABLE, BUT THE MANNER IN WHICH THEY ABRUPTLY TERMINATED THE EMPLOYMENT OF THIS CLEAN CUT, GOOD, CONSCIENTIOUS, MILD MANNERED EMPLOYEE, IS BEYOND BELIEF IN AN ENLIGHTENED AGE AND IS IN ITSELF WITHOUT LEGICAL EXPLANATION.

IN VIEW OF ALL OF THE EVIDENCE IN THIS CASE, I HAVE NO HESITATION IN ACCEPTING THE SUBSTANTIAL EVIDENCE ADDUCED BY THE COMPLAINANT UNION TO ESTABLISH THAT ROBERT ANDREW HACK WAS DISMISSED FOR HIS UNION ACTIVITIES BY THE RESPONDENT COMPANY. DURING A UNION ORGANIZING CAMPAIGN, THE ABRUPT DISMISSAL OF AN EMPLOYEE WHO IS A WELL-KNOWN UNION ACTIVIST AND SUPPORTER, HAS A PSYCHOLOGICAL EFFECT ON OTHER EMPLOYEES. UNION HISTORY IS A TALE OF INJURY AND GREAT SACRIFICE BY ITS ADHERENTS. MANY UNIONISTS HAVE PAID THE SUPREME SACRIFICE FOR THEIR BELIEFS, OTHERS HAVE BEEN GRIEVIOUSLY INJURED, OTHER IMPRISONED AND TRANSPORTED TO REMOTE PARTS OF OUR WORLD FOR UNION ACTIVITIES. ROBERT ANDREW HACK WAS DISMISSED FROM HIS EMPLOYMENT FOR HIS UNION ACTIVITIES.

THE ASPECT OF THIS CASE THAT REALLY DISTURBS ME IS THE DEGREE OF ONUS RESTING WITH THE COMPLAINANT TO ESTABLISH HIS CASE.

THIS CASE IS CRYSTAL CLEAR TO ME FROM A CAREFUL REVIEW OF ALL OF THE EVIDENCE. THE COMPLAINANT UNION PRESENTED AN OVERWHELMING CASE TO ESTABLISH THEIR CHARGES. THEY LABORIOUSLY DEALT WITH THE KEY MATTER OF THE PERMANENT AS OPPOSED TO THE TEMPORARY EMPLOYEE TIME CLOCK NUMBER. THEIR WITNESSES ESTABLISHED BEYOND DOUBT THAT HACK WAS IN EVERY WAY AN EXCELLENT EMPLOYEE. THEY ESTABLISHED QUITE CLEARLY HACK'S UNION ACTIVITIES. THE EVIDENCE THEY ADDUCED PRESENTED AN OVERWHELMING CASE WITH REGARD TO HACK'S REPLACEMENT ON THE JOB BY THE EMPLOYEE PALLISTER, WHO WAS ENGAGED BY THE COMPANY ON THE AFTERNOON OF THE DAY THAT HACK WAS DISMISSED. ALL OF THIS AND OTHER SUBSTANTIAL EVIDENCE ADDUCED BY THE COMPLAINANT UNION IS MET IN THE MAIN BY THE RESPONDENT COMPANY'S CLAIM BY MR. QUEVILLION, MANAGER OF MANUFACTURING, THAT THE COMPANY HAD TO LIVE WITHIN THEIR BUDGET.

THE FOREGOING EXCUSE OFFERED BY THE RESPONDENT TO EXPLAIN AWAY THE DISMISSAL OF HACK IS COMPLETELY UNACCEPTABLE. AS A REPLY TO THE SUBSTANTIAL CASE PRESENTED BY THE UNION, IT IS JUST UNBELIEVABLE. IN VIEW OF ALL OF THE EVIDENCE, THIS BUDGET NONSENSE IS ABSOLUTE GARBAGE.

I PART COMPANY COMPLETELY WITH MY BOARD COLLEAGUES WITH REGARD TO THE DEGREE OF ONUS REQUIRED TO ESTABLISH A COMPLAINANT'S CASE UNDER SECTION 65. IT APPEARS TO ME THAT IN THIS CASE MY COLLEAGUES HAVE STRAYED FAR FROM THE ONUS OF PROOF RESTING WITH A COMPLAINANT AS OUTLINED IN THE NATIONAL AUTOMATIC VENDING CO. LTD., CASE, 63 CLLC, IN VOL. 2, #16,278. DEALING WITH THE DEGREE OF ONUS AS SET OUT IN THAT CASE, THE BOARD SAID AT PAGES 1163-4 THE FOLLOWING:

"THE FACT THAT THE PRIMARY ONUS FOR ESTABLISHING THE MERITS OF THE COMPLAINT LIES ON THE COMPLAINANT, DOES NOT, OF COURSE, MEAN THAT THE COMPLAINANT IS BOUND TO DEMONSTRATE BY DIRECT EVIDENCE EACH AND EVERY FACT OR CONCLUSION OF FACT UPON WHICH THE ISSUE IN DISPUTE DEPENDS. REASONABLE AND NECESSARY INFERENCES MAY AND MUST BE DRAWN FROM ALL THE EVIDENCE ADDUCED AND THAT WHICH IS CLEARLY INFERABLE FROM THE EVIDENCE IS AS MUCH PROVED AS IF IT HAD BEEN ESTABLISHED BY DIRECT EVIDENCE. AS WAS POINTED OUT BY THE BOARD IN THE METROPOLITAN MEAT PACKERS LTD. CASE, CCH CANADIAN LABOUR LAW REPORTER, VOL. 1, ¶16,230, THE ONUS OF PROOF RESTING ON THE COMPLAINANT IN A CLAIM UNDER SECTION 65 OF THE ACT IS NO GREATER THAN IN AN ORDINARY CIVIL ACTION, NAMELY THAT TO BE SUCCESSFUL A COMPLAINANT MUST PROVE, BY A PREPONDERANCE OF PROBABILITY THAT THE EMPLOYER, HAS, IN THE MANNER ALLEGED IN THE PROCEEDINGS, DISCRIMINATED AGAINST THE EMPLOYEE CONTRARY TO THE ACT. (SEE ALSO HANES

V. WAWANESA MUTUAL INSURANCE COMPANY, (1963) 36 D.L.R. (2d) 718 (S.C.C.), WHERE THE SUPREME COURT OF CANADA RECENTLY SETTLED THE QUESTION THAT THE BURDEN OF PROOF IN CIVIL CASES INVOLVING QUASI-CRIMINAL OR CRIMINAL CONDUCT IS THE STANDARD IN CIVIL ACTIONS.)

IT IS NOT WITHOUT SOME INTEREST TO NOTE THE FOLLOWING STATEMENTS CONCERNING THE QUANTUM OF PROOF REQUIRED BY THE COURTS WHERE THE FACTS OF AN ISSUE TO BE PROVED LIE PECULIARLY WITHIN THE KNOWLEDGE OR MEANS OF KNOWLEDGE OF THE OPPOSITE PARTY:-

.....IN CONSIDERING THE AMOUNT OF EVIDENCE NECESSARY TO SHIFT THE BURDEN OF PROOF, THE COURT HAS REGARD TO THE OPPORTUNITIES OF KNOWLEDGE WITH RESPECT TO THE FACT TO BE PROVED, WHICH MAY BE POSSESSED BY THE PARTIES RESPECTIVELY CUMMINGS V. VANCOUVER (1911) 1 W.W.R. 31 PER IRVING. J.A., AT P. 34, QUOTING FROM STEPHEN'S DIGEST OF THE LAWS OF EVIDENCE, 9TH ED., ART. 96 (AFFD. 46 S.C.R. 457; SEE ALSO, WINDSOR BOARD OF EDUCATION V. FORD MOTOR CO. OF CANADA LTD. [1939] S.C.R. 413, PER DAVIES, J. DISSENTING AT P. 432, [1941] A.C. 453, PER LORD ATKIN AT P. 461; R V. KAKELO, [1923], 2 K.B. AT P. 795; PHIPSON ON EVIDENCE, 9TH ED., P. 41.)

.....WHERE THE FACTS LIE PECULIARLY WITHIN THE KNOWLEDGE OF ONE OF THE PARTIES, VERY SLIGHT EVIDENCE MAY BE SUFFICIENT TO DISCHARGE THE BURDEN OF PROOF RESTING ON THE OPPOSITIVE PARTY - TAYLOR ON EVIDENCE, 12TH ED., VOL. I, PP. 262-263; (SEE ALSO PLEET V. CANADIAN NORTHERN QUEBEC R.W. CO., (1921) 50 O.L.R. 223).

A RULE OF EVIDENCE WILL BE FOUND STATED IN THE TEXT BOOKS IN THE FOLLOWING WORDS: "WHERE THE SUBJECT MATTER OF THE ALLEGATION LIES PECULIARLY WITHIN THE KNOWLEDGE OF ONE OF THE PARTIES, THAT PARTY MUST PROVE IT, WHETHER IT BE OF AN AFFIRMATIVE OR A NEGATIVE CHARACTER, AND EVEN THOUGH THERE BE A PRESUMPTION OF LAW IN HIS FAVOUR -- . THIS RULE HAS BEEN MODIFIED BY LATER AUTHORITIES. IN PHIPSON ON EVIDENCE, P. 27, IT IS SAID THAT: IN THE ABSENCE OF STATUTORY PROVISIONS, THE BETTER OPINION NOW SEEMS TO BE THAT, IN GENERAL, SOME PRIMA FACIE EVIDENCE MUST BE GIVEN BY THE COMPLAINANT IN ORDER TO CAST A BURDEN UPON HIS ADVERSARY. THE DIFFICULTY OF PROVING A FACT PECULIARLY KNOWN TO AN OPPONENT MAY, IT HAS BEEN SAID, AFFECT THE QUANTUM OF EVIDENCE DEMANDED IN THE FIRST INSTANCE BUT DOES NOT CHANGE THE RULE OF LAW" . I THINK THIS RULE APPLICABLE TO THE PRESENT CASE AND THAT VERY SLIGHT EVIDENCE AS TO THE DEFENDANT DOING BUSINESS WAS

SUFFICIENT TO SHIFT THE BURDEN TO THE DEFENDANT WACHNOW V. MYERS [1931] W.W.R. 17 (MAN. C.A.) PER FULLERTON, J.A., PP. 17-18.

[N ORDER TO SHIFT THE BURDEN OF JUSTIFICATION TO THE EMPLOYER IN AN ACTION BY A FORMER EMPLOYEE AGAINST AN EMPLOYER AT COMMON LAW FOR DAMAGES FOR WRONGFUL DISMISSAL, THE PLAINTIFF EMPLOYEE NEED PROVE ONLY (1) THE CONTRACT OF HIRING, (2) THE FACT OF HIS DISCHARGE AND (3) HIS DAMAGES. WHEN HE DOES THIS, AN ONUS THEN SHIFTS TO THE DEFENDANT EMPLOYER TO ESTABLISH THAT PROPER CAUSE EXISTED FOR THE DISMISSAL. (SEE GEORGE DITCHFIELD V. GIBSON MANUFACTURING COMPANY LTD. CCH CANADIAN LABOUR LAW REPORTER, VOL. 1, ¶15,362, MCINNES V. FERGUSON, (1899) 32 N.S.R. 516; BUTLER V. C.I.R. [1940] 1 D.L.R. 256.)

NEEDLESS TO SAY, HOWEVER, WE DO NOT FOR A MOMENT SUGGEST, IN PROCEEDINGS UNDER SECTION 65, THAT UNLESS THERE IS EVIDENCE TO THE CONTRARY, DISCRIMINATION MAY BE FOUND AGAINST AN EMPLOYER UPON WHAT AMOUNTS TO MERE PROOF OF A CONTRACT OF HIRING AND DISMISSAL. A COMPLAINANT MAY, HOWEVER, BY PROVING THE CONTRACT OF HIRING, THE DISMISSAL, AND CERTAIN OTHER OBJECTIVE FACTS AND CIRCUMSTANCES, SHORT OF DIRECT EVIDENCE OF DISCRIMINATION, CAST SUCH AN ONUS OF CREDIBLE EXPLANATION ON THE EMPLOYER, WHO ALONE MAY KNOW OR HAVE THE MEANS OF KNOWLEDGE OF THE ACTUAL REASONS FOR THE DISMISSAL, THAT IF SUCH AN EXPLANATION IS NOT GIVEN, AN INFERENCE MAY READILY BE DRAWN THAT THE TREATMENT ACCORDED THE EMPLOYEE WAS DISCRIMINATORY AND CONTRARY TO THE ACT. THAT IT IS OFTEN ONLY THE EMPLOYER WHO HAS THE KNOWLEDGE OR MEANS OF KNOWLEDGE OF THE ACTUAL REASONS FOR THE DISCHARGE IS, OF COURSE, ONLY ONE FACTOR OR CIRCUMSTANCE WHICH THE BOARD MAY TAKE INTO ACCOUNT IN ASSESSING THE EVIDENCE AS A WHOLE AND DECIDING WHAT WEIGHT TO GIVE TO IT. IT PLAINLY CANNOT RELIEVE THE COMPLAINANT OF THE PRIMARY BURDEN OF PROOF TO SATISFY THE BOARD BY CREDIBLE EVIDENCE THAT THE ACTION TAKEN BY THE EMPLOYER WAS DISCRIMINATORY AND CONTRARY TO THE ACT."

ON THE BASIS OF ALL OF THE EVIDENCE ADDUCED AT THE HEARING INTO THIS MATTER, I WOULD HAVE FOUND THAT ROBERT ANDREW HACK WAS DISCHARGED BY THE RESPONDENT FOR UNION ACTIVITY. I WOULD HAVE ORDERED HIS IMMEDIATE REINSTATEMENT WITH FULL COMPENSATION FOR LOSS OF WAGES AND OTHER BENEFITS SUFFERED BY MR. HACK BECAUSE OF SUCH UNLAWFUL DISCHARGE.

INDEXED ENDORSEMENTS - SECTION 47A

15531-68-M: THE CORPORATION OF THE TOWNSHIP OF CALVERT (APPLICANT)
V. TOWN OF IROQUOIS FALLS; ABITIBI PAPER COMPANY LIMITED; INTER-
NATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS, LOCAL
90; CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 259, C.L.C.
(RESPONDENTS).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: PETER F. THALHEIMER FOR THE APPLICANT,
R.T. CARTER FOR THE RESPONDENT ABITIBI PAPER COMPANY LIMITED,
ALICK RYDER, RALPH BEAGAN AND HAROLD PRINCE FOR THE RESPONDENT
INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS,
LOCAL 90, GILLES LEBEL, R. LEVESQUE AND W.A. ACTON FOR THE
RESPONDENT CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 259, C.L.C.

DECISION OF THE BOARD: FEBRUARY 5, 1969.

1. THIS IS AN APPLICATION MADE PURSUANT TO SECTION 47A OF THE LABOUR RELATIONS ACT.
2. AS OF JANUARY 1ST, 1969, THE TOWN OF IROQUOIS FALLS WAS ANNEXED TO THE CORPORATION OF THE TOWNSHIP OF CALVERT AND AS OF THAT DATE ALL OF THE ASSETS AND LIABILITIES OF THE FORMER TOWN OF IROQUOIS FALLS BECAME THOSE OF THE TOWNSHIP OF CALVERT.
3. PRIOR TO THE ANNEXATION REFERRED TO ABOVE, THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL NO. 259 (HEREINAFTER REFERRED TO AS CUPE, LOCAL NO. 259) HELD THE BARGAINING RIGHTS FOR ALL OF THE NINETEEN EMPLOYEES OF THE TOWNSHIP OF CALVERT. THE MOST RECENT COLLECTIVE AGREEMENT BETWEEN THE TWO PARTIES WAS EFFECTIVE FROM JANUARY 1ST, 1968 TO DECEMBER 31ST, 1968 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE.
4. EVIDENCE WAS ADDUCED AT THE HEARING IN THIS MATTER THAT SATISFIED THE BOARD (AND THE PARTIES TO THIS PROCEEDING) THAT THERE ARE FIVE PERSONS WHO PRIOR TO THE ANNEXATION WERE EMPLOYEES OF THE TOWN OF IROQUOIS FALLS AND NOT OF THE ABITIBI PAPER COMPANY LIMITED, IROQUOIS FALLS DIVISION (HEREINAFTER REFERRED TO AS ABITIBI). ABITIBI IS PARTY TO A COLLECTIVE AGREEMENT, EFFECTIVE FROM MAY 1ST, 1968 TO APRIL 30TH, 1970, WITH THE UNITED PAPERMAKERS AND PAPER-WORKERS, LOCAL NO. 109, THE INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS, LOCAL NO. 90 AND THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, LOCAL NO. 1371. BY THIS COLLECTIVE AGREEMENT ABITIBI RECOGNIZED THE THREE UNIONS AS BARGAINING AGENTS FOR THE EMPLOYEES OF THE COMPANY FALLING UNDER THEIR RESPECTIVE JURISDICTIONS.

5. THE EVIDENCE IS THAT THE FIVE EMPLOYEES OF THE TOWN OF IROQUOIS FALLS PAID UNION DUES AND PARTICIPATED IN A GROUP LIFE INSURANCE AND A WELFARE BENEFIT PLAN, ALL PROVIDED FOR UNDER THE COLLECTIVE AGREEMENT. NOTWITHSTANDING THAT THE EMPLOYEES OF THE TOWN OF IROQUOIS FALLS WERE TREATED IN THE SAME MANNER AS MEMBERS OF THE BARGAINING UNIT COVERED BY THE COLLECTIVE AGREEMENT, THE FACT IS THAT NEITHER THE INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS, LOCAL NO. 90, NOR EITHER OF THE OTHER TWO UNIONS THAT ARE PARTIES TO THE AGREEMENT, HOLD THE BARGAINING RIGHTS FOR ANY OF THE EMPLOYEES OF THE TOWN OF IROQUOIS FALLS.

6. SECTION 47A, SUBSECTION 10 OF THE ACT PROVIDES THAT WHERE ONE MUNICIPALITY IS ANNEXED TO ANOTHER MUNICIPALITY, WHICH IS THE SITUATION IN THE INSTANT CASE, THE EMPLOYEES OF THE TWO MUNICIPALITIES CONCERNED ARE DEEMED TO HAVE BEEN INTERMINGLED. SUBSECTION 10 GOES ON TO GRANT TO THE BOARD, IN ITS DISCRETION, THE LIKE POWERS WHICH IT MAY EXERCISE UNDER SUBSECTIONS 5 AND 7 WITH RESPECT TO THE SALE OF A BUSINESS UNDER SECTION 47A. UNDER SUBSECTION 5, THE BOARD MAY DETERMINE (A) WHETHER THE EMPLOYEES CONCERNED CONSTITUTE ONE OR MORE APPROPRIATE BARGAINING UNITS, (B) DECLARE WHICH TRADE UNION OR TRADE UNIONS, IF ANY, SHALL BE THE BARGAINING AGENT OR AGENTS FOR THE EMPLOYEES IN SUCH UNIT OR UNITS, AND (C) AMEND, TO SUCH EXTENT AS THE BOARD DEEMS NECESSARY, ANY CERTIFICATE ISSUED TO ANY TRADE UNION OR ANY BARGAINING UNIT DEFINED IN ANY COLLECTIVE AGREEMENT. SUBSECTION 7 PROVIDES THAT BEFORE DISPOSING OF ANY APPLICATION UNDER THIS SECTION, THE BOARD MAY MAKE SUCH INQUIRY, MAY REQUIRE THE PRODUCTION OF SUCH EVIDENCE AND THE DOING OF SUCH THINGS, OR MAY HOLD SUCH REPRESENTATION VOTES, AS IT DEEMS APPROPRIATE.

7. THE NINETEEN EMPLOYEES OF THE TOWNSHIP OF CALVERT ARE REPRESENTED BY CUPE, LOCAL NO. 259, BY VIRTUE OF ITS COLLECTIVE AGREEMENT WITH THE TOWNSHIP COVERING "ALL EMPLOYEES". ON THE OTHER HAND, NO TRADE UNION HOLDS THE BARGAINING RIGHTS FOR THE FIVE EMPLOYEES OF THE FORMER TOWN OF IROQUOIS FALLS. IN THESE CIRCUMSTANCES, THE BOARD DECLares, PURSUANT TO SUBSECTION 5 OF SECTION 47A, THAT CUPE, LOCAL NO. 259 IS THE BARGAINING AGENT FOR ALL OF THE EMPLOYEES OF THE CORPORATION OF THE TOWNSHIP OF CALVERT AS PRESENTLY CONSTITUTED.

15561-68-M: THE WATERLOO COUNTY BOARD OF EDUCATION (APPLICANT) v. THE CUSTODIANS AND MAINTENANCE ASSOCIATION AND CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 269 (RESPONDENTS).

BEFORE: J.D. O'SHEA, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: JOHN JOSEPH KELLY, Q.C., FOR THE APPLICANT, W.S. COOK AND J. BAUMAN FOR THE RESPONDENT THE CUSTODIANS AND MAINTENANCE ASSOCIATION, M. HIKL, W. ACTON AND E.A. MOYNES FOR THE RESPONDENT CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 269.

DECISION OF THE BOARD:

FEBRUARY 11, 1969.

• • •

2. THE APPLICANT HAS APPLIED FOR RELIEF UNDER SECTION 47A OF THE LABOUR RELATIONS ACT. PURSUANT TO THE PROVISIONS OF THE SECONDARY SCHOOLS AND BOARDS OF EDUCATION AMENDMENT ACT 1968, STATUTES OF ONTARIO, CHAPTER 122, 1968, THE APPLICANT ON AND AFTER THE FIRST DAY OF JANUARY, 1968 BECAME A DIVISIONAL BOARD THAT HAD JURISDICTION OVER THE SCHOOL DIVISION IN WATERLOO COUNTY WHICH WAS FORMERLY COMPRISED OF DISTINCT PUBLIC SCHOOL BOARDS AND HIGH SCHOOL BOARDS.

3. AT THE TIME THAT THE APPLICANT CAME INTO EXISTENCE, THE RESPONDENT THE CUSTODIANS AND MAINTENANCE ASSOCIATION WAS BARGAINING AGENT FOR 153 PERSONS WHO BECAME EMPLOYEES OF THE APPLICANT ON JANUARY 1ST AS A RESULT OF THE CREATION OF THE APPLICANT. THE RESPONDENT CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 269 WAS ALSO BARGAINING AGENT, PURSUANT TO THE TERMS OF THE COLLECTIVE AGREEMENT, WITH RESPECT TO 35 EMPLOYEES OF THE BOARD OF EDUCATION FOR THE CITY OF GALT WHO BECAME EMPLOYEES OF THE APPLICANT ON THE FIRST DAY OF JANUARY, 1969. IN ADDITION TO THE 188 EMPLOYEES WHO WERE REPRESENTED BY ONE OR OTHER OF THE RESPONDENT UNIONS, THE APPLICANT EMPLOYED APPROXIMATELY 56 PERSONS WHO WERE NOT REPRESENTED BY A TRADE UNION.

4. AT THE HEARING IN THIS MATTER, THE PARTIES AGREED THAT ALL OF THE FORMER PUBLIC SCHOOL BOARDS AND HIGH SCHOOL BOARDS WERE MUNICIPALITIES AS DEFINED IN THE DEPARTMENT OF MUNICIPAL AFFAIRS ACT AND AS A RESULT OF THE MANNER IN WHICH THE APPLICANT CAME INTO EXISTENCE, PURSUANT TO THE PROVISIONS OF THE SECONDARY SCHOOLS AND BOARDS OF EDUCATION ACT 1968, THE FORMER MUNICIPALITIES WERE ERECTED INTO THE APPLICANT MUNICIPALITY. THE PARTIES FURTHER AGREED THAT THE PROVISIONS OF SECTION 47A(10) APPLIED IN THIS CASE.

5. HAVING REGARD TO ALL THE FACTS OF THIS CASE, THE BOARD FINDS THAT SECTION 47A(10) APPLIES AND THEREFORE THE EMPLOYEES OF THE APPLICANT WITH WHOM WE ARE HERE CONCERNED "ARE DEEMED TO HAVE BEEN INTERMINGLED". SINCE THE ACT PROVIDES THAT THE EMPLOYEES HAVE BEEN INTERMINGLED AND SINCE A SUBSTANTIAL NUMBER OF THE EMPLOYEES ARE REPRESENTED BY THE CUSTODIANS AND MAINTENANCE ASSOCIATION, THESE EMPLOYEES SHOULD BE ENTITLED TO HAVE AN OPPORTUNITY IN A REPRESENTATION VOTE TO CHOOSE TO CONTINUE TO BE REPRESENTED BY THAT TRADE UNION. SIMILARLY, SINCE A SUBSTANTIAL NUMBER OF EMPLOYEES WERE REPRESENTED BY THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 269, THESE EMPLOYEES SHOULD ALSO HAVE AN OPPORTUNITY IN A REPRESENTATION VOTE TO CHOOSE TO BE REPRESENTED BY THAT TRADE UNION. IN THE SAME MANNER, SINCE A SUBSTANTIAL NUMBER OF EMPLOYEES WERE NOT REPRESENTED BY ANY TRADE UNION, THESE EMPLOYEES SHOULD HAVE A SIMILAR OPPORTUNITY TO INDICATE THEIR WISHES AS TO WHETHER THEY WISH NOT TO BE REPRESENTED BY A TRADE UNION.

6. HAVING REGARD TO THE CIRCUMSTANCES SET OUT ABOVE, THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE APPLICANT IN THE VOTING CONSTITUENCY HEREINAFTER DESCRIBED. ALL EMPLOYEES OF THE APPLICANT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

7. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE CUSTODIANS AND MAINTENANCE ASSOCIATION OR THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 269 OR NO TRADE UNION.

8. THE REGISTRAR IS DIRECTED TO CAUSE NOTICE OF THE REPRESENTATION VOTE TO BE POSTED AT ALL LOCATIONS WHERE EMPLOYEES OF THE APPLICANT ARE EMPLOYED AND TO CAUSE THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE REPRESENTATION VOTE TO BE SEALED PENDING A FURTHER DIRECTION BY THE BOARD.

9. THE MATTER IS REFERRED TO THE REGISTRAR.

INDEXED ENDORSEMENTS - SECTION 79A

15509-68-M: RETAIL, WHOLESALE, HOTEL AND RESTAURANT EMPLOYEES UNION, LOCAL 448, A.F. OF L., C.I.O.-C.C.L., CHARTERED BY THE INTERNATIONAL RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, A.F. OF L., C.I.O. C.C.L. (TRADE UNION) v. RED LION INN (LONDON) LIMITED (EMPLOYER).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: H. BUCHANAN AND D. COLLINS FOR THE TRADE UNION, E.J.R. WRIGHT, Q.C., FOR THE EMPLOYER.

DECISION OF THE BOARD: FEBRUARY 11, 1969.

1. THIS IS A REFERENCE FROM THE MINISTER TO THE BOARD UNDER SECTION 79A OF THE LABOUR RELATIONS ACT. THE QUESTION REFERRED TO THE BOARD IS WHETHER OR NOT THE TRADE UNION IS ENTITLED TO GIVE NOTICE OF ITS DESIRE TO BARGAIN WITH THE EMPLOYER, PURSUANT TO THE PROVISIONS OF SECTION 47A OF THE ACT.

2. THE TRADE UNION WAS PARTY TO A COLLECTIVE AGREEMENT WITH THE SAVOY HOTEL COMPANY (LONDON) LIMITED EFFECTIVE FROM OCTOBER 28TH, 1966 TO OCTOBER 27TH, 1969. BY THE AGREEMENT, THE ABOVE NAMED COMPANY RECOGNIZED THE TRADE UNION AS BARGAINING AGENT FOR ALL FULL-TIME AND PART-TIME EMPLOYEES OF THE SAVOY HOTEL IN LONDON EMPLOYED IN THE LADIES' BEVERAGE ROOM, THE MEN'S BEVERAGE ROOM AND THE LOUNGES.

3. THE SAVOY HOTEL COMPANY (LONDON) LIMITED, WHICH OWNED THE SAVOY HOTEL AT LONDON, WAS INCORPORATED IN MARCH OF 1965. THE PRESIDENT OF THE COMPANY WAS EDWARD WALKEN AND THE SECRETARY-TREASURER WAS NICHOLAS YARED. THE SAVOY HOTEL OPERATED A LADIES AND ESCORTS BEVERAGE ROOM, A MEN'S BEVERAGE ROOM AND A COCKTAIL LOUNGE AND EMPLOYED FROM 12 TO 15 PERSONS TO OPERATE THESE FACILITIES. THE SAVOY HOTEL COMPANY (LONDON) LIMITED HAD A LICENCE FROM THE ONTARIO LIQUOR CONTROL BOARD TO OPERATE ITS BEVERAGE FACILITIES. THE LICENCE, HOWEVER, REQUIRED THE SAVOY HOTEL TO PROVIDE DINING LOUNGE SERVICES. FOR SOME PERIOD OF TIME PRIOR TO THE FALL OF 1967, THE SAVOY HOTEL DID NOT HAVE ANY DINING LOUNGE FACILITIES. DUE TO THIS SHORTCOMING, THE LIQUOR CONTROL BOARD SUSPENDED THE LICENCE FOR THE SAVOY HOTEL IN NOVEMBER OF 1967. THE SAVOY HOTEL THEREUPON IMMEDIATELY CEASED TO OPERATE ITS BEVERAGE ROOMS AND COCKTAIL LOUNGE. WHILE THE BEVERAGE FACILITIES CEASED TO OPERATE, THE SAVOY HOTEL DID REMAIN OPEN FOR BUSINESS, I.E., THE RENTAL OF ROOMS.

4. EDWARD WALKEN AND NICHOLAS YARED OWNED ALL OF THE SHARES OF THE SAVOY HOTEL COMPANY (LONDON) LIMITED. IN MAY OF 1968, ERNEST AZIZ ACQUIRED ALL OF THE SHARES OF WALKEN AND MARLENE KOURI ACQUIRED ALL OF THE SHARES OF YARED FOR VALUABLE CONSIDERATION. THIS TRANSACTION WAS CONTINGENT UPON THE NEW OWNERS ACQUIRING THE SUSPENDED L.C.B.O. LICENCE. THE NEW PRINCIPALS OF THE COMPANY THEREUPON MADE EXTENSIVE RENOVATIONS TO THE SAVOY HOTEL INCLUDING THE INSTALLING OF A DINING LOUNGE.

5. IN SEPTEMBER OF 1968, THE RED LION INN (LONDON) LIMITED WAS INCORPORATED. THE PRINCIPAL OFFICERS AND OWNERS OF THE COMPANY ARE AZIZ AND KOURI. THE RED LION INN (LONDON) LIMITED ENTERED INTO A CONTRACT WITH THE SAVOY HOTEL (LONDON) LIMITED, WHEREBY THE FORMER COMPANY ACQUIRED ALL OF THE ASSETS OF THE LATTER COMPANY, NAMELY, THE BUILDING AND FURNISHINGS OF THE SAVOY HOTEL. THE ASSETS ALSO INCLUDED THE SUSPENDED L.C.B.O. LICENCE. BECAUSE DINING FACILITIES WERE INSTALLED IN THE RENOVATED HOTEL, THE LIQUOR CONTROL BOARD LIFTED ITS SUSPENSION AND GRANTED PERMISSION TO THE RED LION INN (LONDON) LIMITED TO OPERATE BEVERAGE FACILITIES IN WHAT WAS NOW CALLED THE RED LION INN. THE INN OPENED ITS BEVERAGE FACILITIES IN NOVEMBER OF 1968 UNDER THE RESTORED LICENCE. MORE SPECIFICALLY, THE INN COMMENCED TO OPERATE A MEN'S BEVERAGE ROOM, A COCKTAIL LOUNGE AND A DINING LOUNGE, EMPLOYING SOME 25 TO 30 EMPLOYEES, NONE OF WHOM HAD BEEN FORMERLY EMPLOYED BY THE SAVOY HOTEL COMPANY (LONDON) LIMITED.

6. THERE IS NO QUESTION THAT THE TRADE UNION CONTINUED TO HOLD THE BARGAINING RIGHTS FOR THE EMPLOYEES COVERED BY ITS COLLECTIVE AGREEMENT WITH THE SAVOY HOTEL COMPANY (LONDON) LIMITED UP TO THE TIME

THAT ALL OF THE ASSETS OF THAT COMPANY WERE TRANSFERRED TO THE RED LION INN (LONDON) LIMITED. FURTHER, IT IS CLEAR THAT HAD AZIZ AND KOURI CONTINUED TO OPERATE UNDER THE FORMER COMPANY UNTIL THEY RE-COMMENCED THE OPERATION OF THE HOTEL BEVERAGE AND LIQUOR FACILITIES, THE TRADE UNION NOT ONLY WOULD HAVE CONTINUED TO HOLD THE BARGAINING RIGHTS FOR THE NEW EMPLOYEES BUT ALSO THE COLLECTIVE AGREEMENT WOULD HAVE REMAINED IN EFFECT.

7. WE FIND ON THE EVIDENCE THAT THE PRIMARY PURPOSE OF INCORPORATING THE RED LION INN (LONDON) LIMITED WAS TO CREATE A NEW "IMAGE" FOR THE HOTEL. THE RED LION INN, IT SHOULD BE NOTED, CONTINUED TO OPERATE THE SAME TYPE OF BUSINESS WITH APPROXIMATELY THE SAME FACILITIES AS THE SAVOY HOTEL. THE FACT THAT ALL NEW EMPLOYEES WERE EMPLOYED TO OPERATE THESE FACILITIES IS NOT A RELEVANT CONSIDERATION. WE WOULD POINT OUT THAT THE LAPSE OF TIME BETWEEN THE ACQUISITION OF THE ASSETS OF THE SAVOY HOTEL COMPANY (LONDON) LIMITED BY THE RED LION INN (LONDON) LIMITED AND THE RE-OPENING OF THE BEVERAGE AND LIQUOR FACILITIES OF THE RED LION INN WAS OF VERY SHORT DURATION. IN THESE CIRCUMSTANCES, WE FIND THAT THERE WAS A SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 47A OF THE LABOUR RELATIONS ACT. TO HOLD OTHERWISE WOULD BE TO DEFEAT THE INTENT OF THE SECTION. (SEE THE DECISION OF DRYER, J. IN REGINA V. LABOUR RELATIONS BOARD (B.C.) EX PARTE LODUM HOLDINGS LTD. ET AL. B.C. SUPREME COURT 1968 CCH CANADIAN LABOUR LAW REPORTER, VOL. 2, ¶14,151 AT P. 11, 756)

8. ACCORDINGLY, THE ANSWER TO THE QUESTION PUT TO THE BOARD IN THE REFERENCE FROM THE MINISTER IS THAT THE TRADE UNION, PURSUANT TO SECTION 47A OF THE ACT, IS ENTITLED TO GIVE NOTICE TO THE RED LION INN (LONDON) LIMITED OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT.

15597-68-M: HOTEL, MOTEL AND RESTAURANT EMPLOYEES' UNION, LOCAL 899
A.F.L.-C.I.O.-C.L.C. (TRADE UNION) V. KING GEORGE RESTAURANT (REGISTERED)
(EMPLOYER).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: LESLIE BURTON AND JAMES GRAHAM FOR
THE TRADE UNION, MIKE MASTROMINAS AND M. GEROGIANNIS FOR THE
EMPLOYER.

DECISION OF J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER
E. BOYER: FEBRUARY 26, 1969.

1. THIS IS A REFERENCE FROM THE MINISTER UNDER SECTION 79A OF THE ACT. THE QUESTION IS WHETHER THE TRADE UNION IS ENTITLED TO GIVE NOTICE OF DESIRE TO BARGAIN TO THE KING GEORGE RESTAURANT (REGISTERED) PURSUANT TO THE PROVISIONS OF SECTION 47A OF THE ACT.
2. THE HOTEL, MOTEL & RESTAURANT EMPLOYEES' UNION, LOCAL 899 WAS CERTIFIED BY THIS BOARD ON MARCH 30TH, 1961 AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE Pitt STREET HOTEL LIMITED EMPLOYED AT ITS KING GEORGE HOTEL AT CORNWALL SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK. LOCAL 899 AND THE Pitt STREET HOTEL LIMITED ENTERED INTO THREE COLLECTIVE AGREEMENTS IN THE INTERIM PERIOD COVERING THE EMPLOYEES DESCRIBED IN THE BOARD'S CERTIFICATE. AMONG THE JOB CLASSIFICATIONS WHICH APPEAR ON APPENDIX "A", WHICH IS A WAGE RATE SCHEDULE ATTACHED TO THE CURRENT AGREEMENT, ARE CHEF, DISHWASHER AND WAITRESS #1 AND WAITRESS #2.
3. ON AUGUST 14TH, 1968, JOHN MAYRIPLIS, MIKE MASTROMINAS AND EMMANEUL ROUSAKIS ENTERED INTO A PARTNERSHIP WHICH WAS REGISTERED FOR THE PURPOSE OF CARRYING ON THE BUSINESS OF A RESTAURANT UNDER THE NAME "KING GEORGE RESTAURANT". BY A DOCUMENT EXECUTED ON SEPTEMBER 25TH, 1968, THE THREE PARTNERS LEASED FROM THE Pitt STREET HOTEL LIMITED CERTAIN VACANT PREMISES ON THE GROUND FLOOR OF THE KING GEORGE HOTEL WHICH HAD FORMERLY BEEN OCCUPIED BY A SHOP AND THE ENTIRE DINING ROOM AND KITCHEN AREAS OF THE HOTEL WHICH ARE IMMEDIATELY ADJACENT TO THE VACANT PREMISES. THE PARTNERS ALSO LEASED ALL OF THE KITCHEN AND DINING ROOM EQUIPMENT AND UTENSILS. THE LEASE RUNS FOR A PERIOD OF FIFTEEN YEARS ON A MONTHLY RENTAL BASIS.
4. UPON TAKING OVER THE VACANT PREMISES, THE PARTNERSHIP CONVERTED IT INTO A RESTAURANT WHICH ADJOINS AND, IN ESSENCE, IS A PART OF THE EXISTING DINING ROOM OF THE HOTEL. THE PARTNERSHIP ALSO ADDED AN ADDITIONAL KITCHEN TO THE RESTAURANT. THE Pitt STREET HOTEL LIMITED HAD A LIQUOR LICENCE FOR THE EXISTING DINING ROOM AND SECURED AN ADDITIONAL LICENCE FOR THE NEW RESTAURANT SECTION. THE LIMITED COMPANY OPERATES THE LIQUOR FACILITIES AND THE BARTENDERS ARE IN ITS EMPLOY. WHEN THE PARTNERSHIP TOOK OVER THE OPERATION OF THE DINING ROOM THE TWO WAITRESSES BECAME EMPLOYEES OF THE PARTNERSHIP. WHEN THE NEW RESTAURANT SECTION OPENED THE PARTNERSHIP HIRED EIGHT ADDITIONAL WAITRESSES. PATRONS, AT THEIR OPTION, CAN BE SERVED EITHER IN THE RESTAURANT OR DINING ROOM SECTIONS. ALL OF THE WAITRESSES WORK BOTH IN THE RESTAURANT AND DINING ROOM AREAS.
5. BY SECTION 47A, THE WORD "BUSINESS" INCLUDES A PART OR PARTS THEREOF AND THE WORD "SELLS" INCLUDES LEASES, TRANSFERS AND ANY OTHER MANNER OF DISPOSITION. THE LEASE EXECUTED BY THE MEMBERS OF THE PARTNERSHIP CONSTITUTES A "SALE" WITHIN THE MEANING OF THE SECTION. FURTHER, IN TAKING OVER THE OPERATION OF THE DINING ROOM AND KITCHEN OF THE KING GEORGE HOTEL AS A GOING CONCERN, THE PARTNERSHIP ACQUIRED A PART OF THE "BUSINESS" OF THE Pitt STREET HOTEL LIMITED.

THE CONVERSION INTO A RESTAURANT OF THE VACANT PREMISES BY THE PARTNERSHIP AMOUNTED TO AN EXPANSION OF THE BUSINESS WHICH THE Pitt Street Hotel Limited "SOLD" (I.E. LEASED) TO THE PARTNERSHIP. WE ACCORDINGLY FIND THAT LOCAL 899 CONTINUED TO HOLD THE BARGAINING RIGHTS FOR THE EMPLOYEES OF THE PARTNERSHIP. THIS INCLUDES THE EMPLOYEES IN THE KITCHENS, DINING ROOM AND ATTACHED RESTAURANT.

6. ACCORDINGLY, OUR ANSWER TO THE QUESTION REFERRED TO THE BOARD BY THE MINISTER IS THAT THE HOTEL, MOTEL & RESTAURANT EMPLOYEES' UNION, LOCAL 899 IS ENTITLED TO, AND BY LETTER DATED NOVEMBER 25TH, 1968, DID IN FACT, GIVE NOTICE TO THE PARTNERSHIP CARRYING ON BUSINESS AS THE "KING GEORGE RESTAURANT" OF ITS DESIRE TO BARGAIN.

DECISION OF BOARD MEMBER R.W. TEAGLE: FEBRUARY 26, 1969.

I DISSENT.

WE HAVE HERE A SITUATION WHERE THE PARTNERS OF THE KING GEORGE RESTAURANT STARTED A NEW BUSINESS, EMPLOYED 8 NEW EMPLOYEES AND AT THE SAME TIME TOOK OVER PART OF THE EXISTING HOTEL WITH TWO EMPLOYEES. UNDER THESE CIRCUMSTANCES, I WOULD ORDER A VOTE TO DETERMINE THE TRUE WISHES OF THE EMPLOYEES AS TO WHETHER THEY WISH TO BE REPRESENTED BY THE HOTEL, MOTEL & RESTAURANT EMPLOYEES' UNION, LOCAL 899, AFL-CIO-CLC.

15612-68-M: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (TRADE UNION) v. D. & D. CONTRACTORS (EMPLOYER).

BEFORE: H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS P.J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: T.G. HARKNESS FOR THE TRADE UNION, AND NORMAN L. MATHEWS, Q.C., GUY DUMONTIER, W.G. PHELPS FOR THE EMPLOYER.

DECISION OF THE BOARD: FEBRUARY 17, 1969.

1. THIS IS A REFERENCE BY THE MINISTER OF LABOUR TO THE BOARD PURSUANT TO THE PROVISIONS OF SECTION 79A OF THE LABOUR RELATIONS ACT TO DETERMINE WHETHER HE HAS THE AUTHORITY PURSUANT TO THE PROVISIONS OF SECTION 34(4) OF THE ACT TO APPOINT AN ARBITRATOR TO A BOARD OF ARBITRATION.

2. IT APPEARS THAT D.D. CONTRACTORS (A PARTNERSHIP COMPRISED OF MR. DUMONTIER AND MR. DION) WAS FORMED IN ORDER TO TENDER ON A PARTICULAR JOB AT THE LAKEHEAD. THE COMPANY IN ORDER TO DO SO SIGNED AN AGREEMENT WITH THE APPLICANT TO BE BOUND BY THE TERMS OF THE AGREEMENT BETWEEN THE APPLICANT AND THE LAKEHEAD BUILDERS EXCHANGE. THE COMPANY WAS NOT SUCCESSFUL IN ITS TENDER, HAD NO ASSETS OR EMPLOYEES, NOR DID IT CARRY ON BUSINESS. THE PARTNERSHIP WAS THEREAFTER DISSOLVED. SUBSEQUENTLY, MR. DUMONTIER ENTERED INTO A PARTNERSHIP WITH A MR. DUPUIS UNDER THE NAME OF D.& D. CONTRACTORS. THIS COMPANY IS ENGAGED IN BUSINESS AND HAS EMPLOYEES.

3. FROM THE FACTS BEFORE THE BOARD IS IS CLEAR THAT NO COLLECTIVE AGREEMENT EXISTS BETWEEN D.& D. CONTRACTORS AND THE APPLICANT. WHATEVER THE RIGHTS OF THE APPLICANT WITH RESPECT TO ITS SUCCESSOR STATUS, THIS IS NOT THE QUESTION FOR THE BOARD TO DETERMINE IN THIS APPLICATION. FURTHERMORE, WHATEVER OBLIGATIONS D. D. CONTRACTORS AND THE INDIVIDUAL PARTNERS IN THAT FIRM HAVE OR HAD WITH RESPECT TO THE APPLICANT IS NOT A CONSIDERATION FOR THE BOARD. WE MUST LOOK TO THE OBLIGATION OF D. & D. CONTRACTORS AS IT IS TO THIS FIRM THAT THE APPLICATION IS DIRECTED. WE FIND THAT D. & D. CONTRACTORS IS A SEPARATE AND DISTINCT ENTITY FROM D. D. CONTRACTORS. THERE IS NO COLLECTIVE AGREEMENT IN EXISTENCE AS OF THE DATE OF THIS APPLICATION BETWEEN D. & D. CONTRACTORS AND THE APPLICANT.

4. HAVING REGARD TO THE FOREGOING THE ANSWER TO THE QUESTION REFERRED TO THE BOARD BY THE MINISTER OF LABOUR IS AS FOLLOWS:

THE MINISTER OF LABOUR DOES NOT HAVE THE AUTHORITY UNDER SECTION 34(4) OF THE ACT TO APPOINT AN ARBITRATOR TO A BOARD OF ARBITRATION.

INDEXED ENDORSEMENTS - JURISDICTIONAL DISPUTES

15614(A)-68-JD: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 2466 (COMPLAINANT) v. F.A. ACTON (RESPONDENT) v. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1988 (INTERVENER #1) v. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1410 (INTERVENER #2) v. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (INTERVENER #3).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: WILLIAM GOWER FOR THE COMPLAINANT, F.A. ACTON FOR THE RESPONDENT, RICHARD PROCTOR FOR INTERVENER #1, JOHN CARRUTHERS FOR INTERVENER #2, HART ROSSMAN AND WALTER CHENERY FOR INTERVENER #3.

DECISION OF THE BOARD: FEBRUARY 25, 1969.

1. THIS IS A COMPLAINT MADE UNDER SECTION 66 OF THE LABOUR RELATIONS ACT.

2. THE BOARD AT THE HEARING IN THIS MATTER JOINED THE INTERVENERS AS PARTIES TO THE PROCEEDING.

3. THE EVIDENCE IS THAT MEMBERS OF THE COMPLAINANT UNION HAD BEEN DOING THE CARPENTRY AND MILLWRIGHT WORK ON A NUMBER OF PROJECTS FOR THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO ON THE MADAWASKA RIVER IN THE COUNTY OF RENFREW. WHILE MEMBERS OF THE COMPLAINANT LOCAL 2466 WERE WORKING ON THESE PROJECTS, THE CHECK-OFF OF UNION DUES WAS TRANSMITTED TO THE BUSINESS AGENT OF THAT LOCAL IN PEMBROKE. THIS WAS DONE IN ACCORDANCE WITH THE UNION SECURITY PROVISIONS OF THE COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO AND THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA.

4. IT APPEARS THAT ALL OF THE SAME CARPENTERS AND MILLWRIGHTS WHO HAD WORKED ON THE ABOVE PROJECTS AS MEMBERS OF LOCAL 2466 WERE TRANSFERRED TO A CONSTRUCTION SITE AT STEWARTVILLE IN THE TOWNSHIP OF McNABB IN THE COUNTY OF RENFREW. THESE CARPENTERS AND MILLWRIGHTS PERFORMED THE SAME TYPE OF WORK AS THEY HAD PERFORMED ON THE OTHER PROJECTS ON THE MADAWASKA RIVER IN THE COUNTY OF RENFREW. A DISPUTE AROSE BETWEEN LOCAL 2466 ON THE ONE HAND, AND THE CARPENTERS LOCAL 1988 LOCATED IN SMITHS FALLS AND MILLWRIGHTS LOCAL 1410 LOCATED IN KINGSTON ON THE OTHER, AS TO WHICH LOCAL OR LOCALS HAD JURISDICTION OVER THE TOWNSHIP OF McNABB.

5. THE PARENT INTERNATIONAL UNION CALLED UPON WILLIAM STEFANOVITCH AND THE RESPONDENT F.A. ACTON, BOTH OF WHOM ARE INTERNATIONAL REPRESENTATIVES, TO TRY TO RESOLVE THE CONFLICTING GEOGRAPHIC JURISDICTIONAL CLAIMS OF THE COMPLAINANT AND LOCALS 1988 AND 1410. ON NOVEMBER 30TH, 1968, ACTON, BY LETTER REQUESTED THAT THE COMMISSION HENCEFORTH TRANSMIT THE CHECK-OFF OF UNION DUES FOR THE CARPENTERS AND MILLWRIGHTS WORKING ON THE STEWARTVILLE PROJECT IN THE TOWNSHIP OF McNABB TO LOCALS 1988 AND 1410. THE COMMISSION COMPLIED IN ACCORDANCE WITH THE REQUIREMENTS OF ITS COLLECTIVE AGREEMENT WITH THE PARENT INTERNATIONAL UNION.

6. THE COMPLAINANT WAS DISSATISFIED WITH THIS ACTION. A MEETING ATTENDED BY THE BUSINESS AGENT OF EACH OF THE THREE LOCALS AND THE TWO ABOVE MENTIONED INTERNATIONAL REPRESENTATIVES WAS HELD IN OTTAWA

ON JANUARY 8TH, 1969, IN A FURTHER EFFORT TO WORK OUT A MUTUALLY SATISFACTORY SOLUTION TO THE DISPUTE. THE TERMS OF SETTLEMENT AGREED UPON AT THAT MEETING, HOWEVER, WERE REJECTED BY THE MEMBERSHIP OF LOCAL 2466. ON FEBRUARY 3RD, 1969, THE COMPLAINANT FILED THE INSTANT COMPLAINT. THE REMEDY WHICH THE COMPLAINANT IS SEEKING IS THAT THE BOARD UPHOLD ITS JURISDICTION CLAIM TO THE GEOGRAPHIC AREA OF THE TOWNSHIP OF McNABB.

7. IT WAS SUBMITTED THAT THE COMPLAINT FALLS WITHIN THE PURVIEW OF THE LANGUAGE OF SECTION 66(1) OF THE ACT. THAT IS TO SAY, THE BOARD MAY INQUIRE INTO A COMPLAINT THAT AN OFFICER OF A TRADE UNION WAS OR IS REQUIRING AN EMPLOYER TO ASSIGN PARTICULAR WORK TO EMPLOYEES IN A PARTICULAR TRADE UNION RATHER THAN TO EMPLOYEES IN ANOTHER TRADE UNION. THE ARGUMENT WAS ADVANCED THAT THE RESPONDENT ACTON, AS AN OFFICER OF THE PARENT INTERNATIONAL CARPENTERS' UNION, WAS OR IS REQUIRING THE COMMISSION WHICH IS THE EMPLOYER TO ASSIGN THE CARPENTRY AND MILLWRIGHT WORK BEING PERFORMED ON THE STEWARTVILLE PROJECT TO MEMBERS OF LOCALS 1988 AND 1410 RATHER THAN LOCAL 2466. IN OTHER TYPES OF PROCEEDINGS, EACH LOCAL OF AN INTERNATIONAL OR NATIONAL UNION IS CONSIDERED BY THE BOARD TO BE A SEPARATE TRADE UNION. BE THIS AS IT MAY, WE ARE SATISFIED THAT THE TYPE OF DISPUTE WITH WHICH THE BOARD IS CONFRONTED IN THE INSTANT COMPLAINT IS NOT THE TYPE OF WORK ASSIGNMENT DISPUTE CONTEMPLATED BY THE LEGISLATION.

8. LET US ASSUME, FOR PURPOSES OF ARGUMENT, HOWEVER, THAT UNDER THE WORDING OF SECTION 66(1) THE BOARD DOES HAVE THE JURISDICTION TO DEAL WITH THE COMPLAINT. HERE WE DO NOT HAVE SEPARATE GROUPS OF EMPLOYEES BELONGING TO TRADE UNIONS REPRESENTING DIFFERENT TRADES. INSTEAD THERE IS BUT A SINGLE GROUP OF EMPLOYEES BELONGING TO THE SAME CRAFT WHO PERFORM THE SAME TYPE OF WORK. THE DISPUTE IS NOT OVER A WORK ASSIGNMENT IN THE ORDINARY SENSE. RATHER THE DISPUTE IS BETWEEN LOCALS OF THE SAME UNION AS TO JURISDICTION OVER A GEOGRAPHIC AREA, I.E. THE TOWNSHIP OF McNABB. BASICALLY, IT IS AN INTERNAL UNION DISPUTE. MOREOVER, MACHINERY IS PROVIDED IN THE CONSTITUTION OF THE PARENT INTERNATIONAL UNION FOR THE SETTLEMENT OF THIS TYPE OF DISPUTE.

9. AGAIN, ON THE ASSUMPTION THE BOARD DOES HAVE JURISDICTION, WE DO NOT DEEM IT ADVISABLE OR DESIRABLE TO INTERFERE IN THE INTERNAL AFFAIRS OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA AND ITS LOCAL UNIONS, PARTICULARLY HAVING REGARD TO THE NATURE OF THE DISPUTE. ACCORDINGLY, IN THE EXERCISE OF OUR DISCRETION UNDER SECTION 66(1) OF THE ACT, THE BOARD DOES NOT PROPOSE TO INQUIRE FURTHER INTO THE COMPLAINT OF THE COMPLAINANT.

10. THIS PROCEEDING ACCORDINGLY IS TERMINATED.

15650(A)-68-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (COMPLAINANT) V. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 AND THE FOUNDATION COMPANY OF CANADA LIMITED (RESPONDENTS).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: J.B. WATERMAN AND A.J. FOUCault FOR THE COMPLAINANT, HENRY M. POLLIT, PAUL GUERTIN AND DERRICK MANSON FOR THE RESPONDENT UNION, P.E. ANGUS AND D. LYNN FOR THE RESPONDENT COMPANY.

DECISION OF J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, FOR THE MAJORITY, AND DISSENTING DECISIONS OF BOARD MEMBERS E. BOYER AND R.W. TEAGLE:

• • •

2. THE COMPLAINANT IN ITS COMPLAINT HAS REQUESTED THAT THE BOARD MAKE AN INTERIM ORDER WITH RESPECT TO AN ASSIGNMENT OF WORK MADE BY THE RESPONDENT COMPANY, WHICH IS THE SUBJECT OF THE INSTANT DISPUTE.

3. AT THE OUTSET OF THE HEARING, COUNSEL FOR THE RESPONDENT CARPENTERS' UNION CHALLENGED THE JURISDICTION OF THE BOARD TO ENTERTAIN THE COMPLAINT ON THE GROUNDS THAT IN ACCORDANCE WITH A DOCUMENT DATED OCTOBER 3RD, 1949, ENTITLED MEMORANDUM ON CONCRETE FORMS, THE INTERNATIONAL UNION OF THE COMPLAINANT AND THE INTERNATIONAL UNION OF THE RESPONDENT AGREED THAT IN THE EVENT OF A DISPUTE OVER THE DIVISION OF WORK SET OUT IN THE MEMORANDUM, WHICH WAS NOT ADJUSTED BY THE INTERNATIONAL UNIONS, THE DISPUTE WOULD BE REFERRED TO THE NATIONAL JOINT BOARD FOR THE SETTLEMENT OF JURISDICTIONAL DISPUTES. COUNSEL FOR THE RESPONDENT CARPENTERS ALSO REFERRED TO MINUTES OF TWO MEETINGS, ONE ON MAY 24TH, 1968, AND ONE ON AUGUST 7TH, 1968, WHEREBY IT IS ALLEGED BY COUNSEL THAT ALL PARTIES TO THE INSTANT COMPLAINT AGREED TO REFER ANY DISPUTE OVER THE ASSIGNMENT OF WORK TO THE NATIONAL JOINT BOARD. ON THE BASIS OF THESE DOCUMENTS, IN COMBINATION, COUNSEL SUBMITS THE BOARD IS WITHOUT AUTHORITY TO HEAR THE COMPLAINT.

4. SUBSECTION 8 OF SECTION 66 OF THE LABOUR RELATIONS ACT PROVIDES THAT NO COMPLAINT UNDER SECTION 66 MAY BE MADE BY A TRADE UNION OR EMPLOYER THAT HAS ENTERED INTO A COLLECTIVE AGREEMENT THAT CONTAINS A PROVISION REQUIRING THE REFERENCE OF ANY DIFFERENCE BETWEEN THEM ARISING OUT OF A WORK ASSIGNMENT TO A TRIBUNAL MUTUALLY SELECTED BY THEM WITH RESPECT TO ANY DIFFERENCE AS TO THE WORK ASSIGNMENT THAT CAN BE RESOLVED UNDER THE COLLECTIVE AGREEMENT. THE BOARD WAS ADVISED THAT THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT COMPANY AND THE

RESPONDENT UNION DOES CONTAIN A PROVISION FOR THE REFERENCE TO ANY WORK ASSIGNMENT TO THE NATIONAL JOINT BOARD, BUT THAT NO SUCH PROVISION APPEARS IN THE CURRENT COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE COMPLAINANT LABOURERS' UNION AND THE RESPONDENT COMPANY. IN THESE CIRCUMSTANCES, THERE IS NO TRIBUNAL WHICH COULD MAKE A DETERMINATION ON THE WORK ASSIGNMENT WHICH WOULD BE BINDING UPON ALL THREE PARTIES INVOLVED IN THIS DISPUTE. FURTHER, EVEN ASSUMING FOR PURPOSES OF ARGUMENT, THAT ALL THREE PARTIES TO THIS PROCEEDING AGREED AT A MEETING ON MAY 24TH, 1968 TO BE BOUND BY ANY DETERMINATION OF THE NATIONAL JOINT BOARD, SUBSECTION 8 REQUIRES THAT A PROVISION REQUIRING THE REFERENCE OF ANY WORK ASSIGNMENT DISPUTE TO A MUTUALLY SELECTED TRIBUNAL MUST BE CONTAINED IN A COLLECTIVE AGREEMENT. AS HAS BEEN STATED, THIS SITUATION DOES NOT PREVAIL IN THE INSTANT CASE.

5. THE BOARD AT THE HEARING IN THIS MATTER ACCORDINGLY RULED THAT IT HAD JURISDICTION TO ENTERTAIN AND MAKE A DETERMINATION ON THE INSTANT COMPLAINT.

6. COUNSEL FOR THE RESPONDENT CARPENTERS ALTERNATIVELY ARGUED THAT IN THE EXERCISE OF ITS DISCRETION UNDER SUBSECTION 7 OF SECTION 66, THE BOARD SHOULD POSTPONE INQUIRING INTO THE COMPLAINT. COUNSEL ADVISED THE BOARD THAT THE REASON FOR HIS REQUEST WAS THAT THE INSTANT DISPUTE HAD BEEN REFERRED TO THE NATIONAL JOINT BOARD AND THAT THE BOARD SHOULD STAY ANY PROCEEDINGS PENDING A DETERMINATION BY THAT TRIBUNAL.

7. HAVING REGARD TO ALL THE CIRCUMSTANCES, INCLUDING THE FACT THAT THE BOARD IS NOT SATISFIED ON THE BASIS OF THE EVIDENCE BEFORE IT THAT ALL PARTIES HAVE AGREED TO OR WOULD BE BOUND BY A DETERMINATION OF THE NATIONAL JOINT BOARD, THIS BOARD, IN THE EXERCISE OF ITS DISCRETION, RULED AT THE HEARING THAT IT WAS NOT PREPARED TO ACCEDE TO THE REQUEST OF COUNSEL FOR THE RESPONDENT CARPENTERS' UNION AND POSTPONE THE BOARD'S INQUIRY INTO THE COMPLAINT.

8. PURSUANT TO SUBSECTION 2 OF SECTION 66, THE BOARD THEREUPON PROCEEDED TO CONSULT WITH THE PARTIES WITH REGARD TO THE INTERIM ORDER SOUGHT BY THE COMPLAINANT. THE BOARD WAS ADVISED THAT THE WORK OF DISMANTLING OF "BUILT-IN-PLACE" WALL FORMS ON THE PROJECT IN QUESTION, WHICH IS THE SUBJECT OF THIS DISPUTE, HAD BEEN PERFORMED IN ACCORDANCE WITH AN ASSIGNMENT MADE BY THE RESPONDENT COMPANY SET OUT IN LETTERS DATED AUGUST 6TH, 1968, ADDRESSED TO THE COMPLAINANT LABOURERS' UNION AND THE RESPONDENT CARPENTERS' UNION. IT APPEARED FROM THE REPRESENTATIONS OF THE PARTIES THAT FROM THAT TIME UNTIL JANUARY 30TH, 1969, THE WORK WAS LARGELY PERFORMED IN ACCORDANCE WITH THAT ASSIGNMENT. MORE PARTICULARLY, THE STRIPPING OF ALL "BUILT-IN-PLACE" WALL FORMS THAT WERE TO BE RE-USSED WAS PERFORMED BY MEMBERS OF THE RESPONDENT CARPENTERS' UNION AND THAT THE

STRIPPING OF THE SAME TYPE OF WALL FORMS WHICH WERE NOT TO BE RE-USED WAS PERFORMED BY MEMBERS OF THE COMPLAINANT LABOURERS' UNION. FURTHER, MEMBERS OF THE COMPLAINANT LABOURERS' UNION WERE ASSIGNED TO CLEAN AND OIL THE MATERIAL USED IN THE SAID FORMS AND MOVE THEM TO THE NEXT POINT OF ERECTION.

9. THE EVIDENCE IS THAT ON JANUARY 30TH, 1969, THE RESPONDENT COMPANY ALTERED THE ASSIGNMENT TO CONFORM WITH A DIRECTION MADE BY THE BOARD ON JANUARY 21ST, 1969, WITH REGARD TO THE DISMANTLING OF "BUILT-IN-PLACE" WALL FORMS BEING USED ON THE FALCONBRIDGE MINE IRON ORE CONCENTRATOR AT FALCONBRIDGE, ON WHICH PROJECT FRASER-BRACE ENGINEERING COMPANY LIMITED IS THE GENERAL CONTRACTOR. FOLLOWING HEARINGS ON THE MERITS OF THAT PARTICULAR COMPLAINT, THE BOARD DIRECTED THE COMPANY TO ASSIGN THE RELEASING OF THE WEDGES OR CLAMPS AND THE REMOVAL OF THE PLYWOOD SHEETING FROM THE CONCRETE SURFACE OF THE WALLS TO MEMBERS OF THE RESPONDENT CARPENTERS' UNION AND TO ASSIGN THE STRIPPING OF THE BRACES, STRONGBACKS, WALERS AND STUDS TO MEMBERS OF THE COMPLAINANT LABOURERS' UNION.

10. HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES, AND HAVING PARTICULAR REGARD TO THE ASSIGNMENT MADE BY THE RESPONDENT COMPANY AS SET OUT IN THE LETTERS TO THE TWO DISPUTING UNIONS DATED AUGUST 6TH, 1968, THE BOARD DEEMS IT ADVISABLE IN ALL THE CIRCUMSTANCES TO MAKE THE FOLLOWING INTERIM ORDER:

THE RESPONDENT THE FOUNDATION COMPANY OF CANADA LIMITED SHALL ASSIGN THE WORK OF STRIPPING THE "BUILT-IN-PLACE" WALL FORMS, WHICH ARE TO BE RE-USED AGAIN, ON THE IRON ORE RECOVERY PLANT AT COPPER CLIFF FOR THE INTERNATIONAL NICKEL COMPANY OF CANADA TO MEMBERS OF THE RESPONDENT UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486.

FURTHER, THE SAID RESPONDENT COMPANY SHALL ASSIGN THE WORK OF STRIPPING THE "BUILT-IN-PLACE" WALL FORMS, WHICH ARE NOT TO BE RE-USED AGAIN, ON THE SAID PROJECT TO MEMBERS OF THE COMPLAINANT LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493.

FURTHER, THE RESPONDENT COMPANY SHALL ASSIGN THE WORK OF MOVING, CLEANING, OILING AND CARRYING TO THE NEXT POINT OF ERECTION OF THE MATERIALS USED IN THE "BUILT-IN-PLACE" WALL FORMS ON THE SAID PROJECT TO MEMBERS OF THE COMPLAINANT TRADE UNION.

THIS ORDER SHALL BECOME EFFECTIVE FORTHWITH AND SHALL REMAIN IN EFFECT UNTIL SUCH TIME AS THE BOARD ISSUES A FURTHER DIRECTION.

DECISION OF BOARD MEMBER EDMUND BOYER: FEBRUARY 17, 1969.

I CONCUR WITH THE DECISION OF THE MAJORITY WITH RESPECT TO THE BOARD'S JURISDICTION AND THE INTERIM ORDER. HOWEVER, I WOULD HAVE GRANTED THE REQUEST OF COUNSEL FOR THE RESPONDENT CARPENTERS' UNION FOR A POSTPONEMENT OF THE BOARD'S INQUIRY INTO THE COMPLAINT PENDING THE DISPOSITION OF THE APPLICATION CONCERNING THE DISPUTE WHICH HAS BEEN MADE TO THE NATIONAL JOINT BOARD.

DECISION OF BOARD MEMBER R.W. TEAGLE: FEBRUARY 17, 1969.

I CONCUR IN THE RULING MADE BY THE MAJORITY WITH RESPECT TO THE BOARD'S JURISDICTION AND EXERCISING OUR DISCRETION TO PROCEED WITH AN INQUIRY INTO THE COMPLAINT. I DISSENT, HOWEVER, FROM THE MAJORITY WITH REGARD TO THE INTERIM ORDER. I WOULD HAVE ISSUED AN INTERIM ORDER IN ACCORDANCE WITH THE WORK ASSIGNMENT MADE BY THE RESPONDENT COMPANY ON JANUARY 30TH, 1969.

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

15304-68-R: OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT)
v. TRW ELECTRONIC COMPONENTS LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES
(OBJECTORS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND R.W. TEAGLE.

DECISION OF THE BOARD: FEBRUARY 13, 1969.

1. SUBSEQUENT TO THE BOARD'S DECISION IN THIS MATTER CORRESPONDENCE WAS RECEIVED FROM COUNSEL FOR THE RESPONDENT AND COUNSEL FOR THE GROUP OF EMPLOYEES REQUESTING THAT THE APPLICATION BE DISMISSED WITH A SIX MONTH BAR.

2. THE PRACTICE OF THE BOARD IN THESE MATTERS WAS ESTABLISHED IN LUMBER AND SAWMILL WORKERS' UNION LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA AND MATHIAS OUELLETTE (1955) C. C. H. CANADIAN LABOUR LAW REPORTS, TRANSFER BINDER '55-59', ¶16,026,

C.L.S. 76-485. THAT CASE INDICATES THAT THE BOARD'S PRACTICE IS AS FOLLOWS:

(A) WHERE AFTER THE TAKING OF A REPRESENTATION VOTE DIRECTED BY THE BOARD, AN APPLICATION IS DISMISSED BECAUSE NOT MORE THAN FIFTY PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE WERE CAST IN FAVOUR OF THE APPLICANT THE BOARD USUALLY ATTACHES TO ITS DECISION THE FOLLOWING WORDS:

"THE BOARD WILL NOT ENTERTAIN AN APPLICATION FOR CERTIFICATION BY THE APPLICANT IN RESPECT OF ANY OF THE EMPLOYEES IN THE BARGAINING UNIT WITHIN THE PERIOD OF SIX MONTHS FROM THE DATE HEREOF."

THE BOARD'S PRACTICE IN SUCH A SITUATION HOWEVER, IS SUBJECT TO THE PROVISO THAT THERE MAY BE SPECIAL CIRCUMSTANCES IN WHICH THE BOARD WILL REFRAIN FROM IMPOSING SUCH A BAR.

(B) WHERE A REPRESENTATION VOTE HAS BEEN DIRECTED AND THE VOTE NOT TAKEN THE BOARD WILL NOT IMPOSE AN AUTOMATIC SIX MONTHS BAR BUT IF THE APPLICANT UNION FILES A NEW APPLICATION AFFECTING THE SAME EMPLOYEES WITHIN SIX MONTHS FROM THE DATE WHEN THE APPLICATION IS DISMISSED, THE ONUS WILL LIE ON THE APPLICANT IN THE NEW APPLICATION TO SHOW THAT SPECIAL CIRCUMSTANCES DO EXIST WHICH WOULD WARRANT THE NEW APPLICATION BEING ENTERTAINED AT THAT TIME. ACCORD, INTERNATIONAL Hod CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA LOCAL UNION 597 v. MOLLENHAUER CONTRACTING COMPANY LIMITED 1966 APRIL MONTHLY REPORT, O.L.R.B. 40.

3. THE PRACTICE OF THE BOARD WITH RESPECT TO (A) IMPOSING A BAR OR (B) CAUSING AN APPLICANT TO JUSTIFY AN APPLICATION BEING ENTERAINED IS LIMITED TO THE AFORESAID SITUATIONS UNLESS SPECIAL CIRCUMSTANCES CAN BE SHOWN TO CAUSE THE BOARD TO DEVIATE FROM ITS PRACTICE. Retail Clerks INTERNATIONAL ASSOCIATION v. HI WAY MARKET LIMITED, 1968 MAY MONTHLY REPORT, O.L.R.B. 155; canadian UNION OF OPERATING ENGINEERS v. CAMPBELL SOUP COMPANY LTD., 1968 FEBRUARY MONTHLY REPORT, O.L.R.B. 1091 AT 1094-5.

4. THE PARTIES HAVE NOT AT THIS TIME SHOWN ANY SPECIAL CIRCUMSTANCES TO CAUSE THE BOARD TO DEVIATE FROM ITS PRACTICE AND THEREFORE THEIR REQUEST IS DENIED BUT WITHOUT PREJUDICE TO RAISING THIS MATTER SHOULD THERE BE A SUBSEQUENT APPLICATION BY THE APPLICANT HEREIN.

15556-68-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1687 (APPLICANT) v. EVOY-MCLEAN LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: L. POPOVICH FOR THE APPLICANT, AND R. BOISSONNEAULT FOR THE RESPONDENT.

DECISION OF G.W. REED, Q.C., CHAIRMAN, AND BOARD MEMBER
R.W. TEAGLE. FEBRUARY 27, 1969.

1. THE APPLICANT HAS REQUESTED THE BOARD TO RECONSIDER ITS DECISION DATED JANUARY 27, 1969 IN WHICH AN APPLICATION FOR CERTIFICATION BY THE APPLICANT WAS DISMISSED. THE REASON FOR THE DISMISSAL WAS THAT THE APPLICANT FILED ONLY RECEIPTS AS EVIDENCE OF MEMBERSHIP. THERE WAS NOTHING ON THE RECEIPTS TO SHOW THAT THE PERSONS WHOSE NAMES APPEARED THEREON APPLIED FOR MEMBERSHIP IN THE APPLICANT OR AGREED TO ACCEPT THE OBLIGATIONS OF MEMBERSHIP OR WERE DULY ENROLLED AS MEMBERS.

2. AT THE HEARING HELD TO CONSIDER THE REQUEST OF THE APPLICANT IT WAS CLEARLY ESTABLISHED THAT THE SAME TYPE OF EVIDENCE HAD BEEN ACCEPTED BY THE BOARD IN A PREVIOUS CASE INVOLVING THE APPLICANT. THERE CAN BE NO DOUBT, HOWEVER, THAT THE BOARD WAS IN ERROR IN ACCEPTING THAT EVIDENCE BECAUSE THIS TYPE OF EVIDENCE HAS BEEN CONSISTENTLY REJECTED BY THE BOARD IN OTHER CASES. SEE, IN ADDITION TO THOSE CASES CITED IN OUR EARLIER DECISION IN THIS CASE, MCNAMARA CONSTRUCTION OF ONTARIO LIMITED, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1963, PAGE 309; G & H STEEL SERVICE OF CANADA LIMITED, O.L.R.B. MONTHLY REPORT, FEBRUARY 1967, PAGE 883.

3. IT IS ARGUED THAT THE WORDS "ON INITIATION FEES" APPEARING ON THE RECEIPTS IMPLIED AN APPLICATION FOR MEMBERSHIP. THESE SAME WORDS APPEARED ON THE RECEIPTS IN MATTHEWS CONSTRUCTION COMPANY LIMITED, 55 C.L.L.C. PARAGRAPH 18,017 (REFERRED TO IN OUR EARLIER DECISION) AND IN THAT CASE THE BOARD REFUSED TO DRAW SUCH INFERENCE. EVEN IF WE WERE PREPARED TO MAKE SUCH AN ASSUMPTION, THE QUESTION MIGHT WELL ARISE "MEMBERSHIP IN WHAT". THE RECEIPT REFERS TO THE APPLICANT BUT IT IS THE PARENT UNION OF THE APPLICANT WHICH, ON THE FACE OF THE RECEIPT, IS AUTHORIZED TO REPRESENT IN COLLECTIVE BARGAINING THE EMPLOYEE PAYING THE MONEY. IF IT WAS MEMBERSHIP IN THE PARENT, THAT

WOULD NOT SATISFY THE BOARD'S REQUIREMENTS BECAUSE THE BOARD HAS HELD ON A NUMBER OF OCCASIONS THAT MEMBERSHIP IN THE PARENT IS NOT PER SE MEMBERSHIP IN A PARTICULAR LOCAL OF THE PARENT. SEE, FOR EXAMPLE, MILSOM FLOORS LIMITED, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1966, PAGE 419.

4. IT WAS ALSO SUGGESTED THAT THE BOARD MIGHT DIRECT A REPRESENTATION VOTE IN THIS CASE. HOWEVER, UNDER SECTION 7 OF THE LABOUR RELATIONS ACT, THE BOARD IS ENTITLED TO DO SO ONLY WHERE IT IS SATISFIED THAT NOT LESS THAN 45 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT ARE MEMBERS OF THE APPLICANT TRADE UNION. IN THE FACE OF THE CASES CITED ABOVE, THE BOARD IS UNABLE TO MAKE THAT FINDING ON THE EVIDENCE BEFORE IT IN THE INSTANT CASE.

5. WHILE WE ARE NATURALLY TROUBLED BY THE COURSE OF EVENTS WHICH LED UP TO THE SITUATION IN WHICH THE APPLICANT NOW FINDS ITSELF, WE HAVE COME TO THE RELUCTANT CONCLUSION THAT WE HAVE NO ALTERNATIVE BUT TO DENY THE REQUEST FOR RECONSIDERATION.

DECISION OF BOARD MEMBER E. BOYER: FEBRUARY 27, 1969.

IN ALL THE CIRCUMSTANCES OF THIS CASE I WOULD HAVE ORDERED A REPRESENTATION VOTE.

15611-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. WIENER ELECTRIC LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS P.J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: D.M. STOREY AND L. ROA FOR THE APPLICANT; DANIEL WIENER FOR THE RESPONDENT.

DECISION OF THE BOARD: FEBRUARY 18, 1969.

• • •

2. THIS IS AN APPLICATION FOR CERTIFICATION.

3. A REPLY TO THE APPLICATION FOR CERTIFICATION WAS FILED BY A FIRM OF SOLICITORS PURPORTING TO ACT ON BEHALF OF THE RESPONDENT. THE REPLY WAS ACCOMPANIED BY SCHEDULES "A", "B", "C" AND "D", THE ACCURACY OF WHICH WERE CONFIRMED BY THE SIGNATURE OF ONE R. NARBONNE, TOGETHER WITH SPECIMEN SIGNATURES OF THOSE PERSONS WHOSE NAMES APPEAR ON THE LISTS. THESE DOCUMENTS WERE FILED UNDER COVER OF A LETTER FOR THE FIRM OF SOLICITORS ABOVE REFERRED TO ON BEHALF OF ITS CLIENTS WIENER ELECTRIC LIMITED.

4. A RETURN OF POSTING WAS FILED WITH THE BOARD. IT IS IN THE USUAL FORM AND CONTAINS A DECLARATION THAT THE SIGNATORY THERETO, RACHEL NARBONNE, IS THE ASSISTANT OFFICE MANAGER OF THE RESPONDENT. IT IS SIGNED "R. NARBONNE".

5. DANIEL WIENER, WHO IDENTIFIED HIMSELF AS PRESIDENT OF THE RESPONDENT, APPEARED ON HIS OWN BEHALF AND SOUGHT AN ADJOURNMENT ON THE GROUNDS THAT HE HAD BEEN ABSENT FROM THE COUNTRY AT THE TIME OF THE APPLICATION. HE HAD ONLY RETURNED AND KNEW NOTHING ABOUT THE MATTER. THE BOARD ADVISED MR. WIENER THAT IT WOULD CONSIDER HIS REPRESENTATIONS AND RESERVED ITS DECISION IN THE MATTER.

6. IF MR. WIENER, PERSONALLY WAS UNAWARE OF THE APPLICATION, THE COMPANY, WIENER ELECTRIC LIMITED, WHICH IS THE RESPONDENT NAME IN THE APPLICATION, WAS AWARE OF IT AND TOOK ALL PROPER STEPS TO COMPLY WITH THE REQUIREMENTS OF THE ACT AND THE BOARD IN THE MATTER. THE ONLY CONTROVERSIAL POINT RAISED IN THE REPLY WAS WITH RESPECT TO THE BARGAINING UNIT AND THE BOARD IS PREPARED TO RESOLVE THAT IN FAVOUR OF THE PROPOSAL MADE BY THE RESPONDENT. THIS WAS A REQUEST TO EXCLUDE FROM THE UNIT PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD. MR. WIENER SPECIFIED NO OTHER OBJECTION ON BEHALF OF THE RESPONDENT.

7. THE BOARD, HAVING CONSIDERED THE FACTS AND THE SUBMISSION OF MR. WIENER AND THE APPLICANT, FINDS NO VALID REASON FOR ACCEDING TO THE REQUEST FOR AN ADJOURNMENT MADE BY MR. WIENER.

INDEXED ENDORSEMENT - SECTION 65

15558-68-U: LOCAL 800 OF THE UNITED ASSOCIATION OF JOURNEYMAN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (COMPLAINANT) v. THE FOUNDATION COMPANY OF CANADA LIMITED AND A. D. ROSS AND COMPANY LIMITED (RESPONDENTS).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

DECISION OF THE BOARD: FEBRUARY 18, 1969.

1. THE COMPLAINANT HAS REQUESTED THE BOARD TO REVIEW ITS DECISION DATED JANUARY 31, 1969, DISMISSING A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT IN ACCORDANCE WITH ITS GENERAL POLICY THAT WHERE A REMEDY EXISTS UNDER A COLLECTIVE AGREEMENT THE BOARD WILL NOT, EXCEPT IN EXCEPTIONAL CIRCUMSTANCES, DEAL WITH THE MATTER UNDER SECTION 65.

2. AS WAS POINTED OUT IN THE BOARD'S EARLIER DECISION, THERE ARE NO EXCEPTIONAL CIRCUMSTANCES IN THIS CASE, NOR ARE ANY NEW MATTERS ALLEGED OR RAISED IN THE REQUEST FOR RECONSIDERATION. IN THESE CIRCUMSTANCES, WE CAN SEE NO GROUND FOR VARYING OR REVOKING OUR EARLIER DECISION.

3. IT WOULD APPEAR FROM THE REQUEST THAT THE COMPLAINANT DOES NOT FULLY UNDERSTAND THE POLICY OF THE BOARD IN MATTERS OF THIS KIND. THE REGISTRAR IS THEREFORE DIRECTED TO FORWARD TO THE COMPLAINANT WITH THIS DECISION COPIES OF THE DECISIONS OF THE BOARD REFERRED TO IN ITS EARLIER DECISION DATED JANUARY 31, 1969.

EXCERPT FROM DECISION IN CONSTRUCTION INDUSTRY CASE

15588-68-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. NADECO LIMITED (RESPONDENT) v. LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 597 (FORMERLY KNOWN AS THE INTERNATIONAL HOD CARRIERS BUILDING & COMMON LABOURERS UNION OF AMERICA LOCAL 597) (INTERVENER #1) v. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL #1071 (INTERVENER #2).

4. THE INTERVENER LABOURERS UNION LOCAL 597 WAS CERTIFIED BY THE BOARD ON FEBRUARY 3RD, 1964 FOR ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN BOARD GEOGRAPHIC AREA #10. THE BOARD ALSO CERTIFIED THE INTERVENER CARPENTERS UNION LOCAL 1071 ON FEBRUARY 6TH, 1964 FOR ALL CARPENTERS AND CARPENTERS APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE SAME GEOGRAPHIC AREA. THE RESPONDENT MET AND BARGAINED WITH THE TWO INTERVENER UNIONS. UPON APPLICATION, A CONCILIATION OFFICER WAS APPOINTED TO ASSIST THE LABOURERS AND CARPENTERS AND THE RESPONDENT IN THEIR NEGOTIATIONS. BY LETTERS DATED APRIL 22ND, 1964, THE MINISTER ADVISED THE LABOURERS AND THE CARPENTERS AND THE RESPONDENT THAT HE HAD DECIDED NOT TO APPOINT BOARDS OF CONCILIATION. THE EVIDENCE IS THAT JUST ABOUT THIS TIME THE RESPONDENT COMPLETED THE CONSTRUCTION PROJECT UPON WHICH IT HAD BEEN EMPLOYING LABOURERS AND CARPENTERS. FURTHER, ACCORDING TO THE EVIDENCE, THE RESPONDENT HAS NOT ENGAGED IN ANY CONSTRUCTION WORK IN BOARD GEOGRAPHIC AREA #10 BETWEEN APRIL OF 1964 AND DECEMBER OF 1968, WHEN IT COMMENCED WORK ON THE PROJECT WHICH GAVE RISE TO THE INSTANT APPLICATION.

5. AT THE HEARING IN THIS MATTER, AFTER ENTERTAINING THE REPRESENTATIONS OF ALL PARTIES, THE BOARD FOUND THAT THE INTERVENER LABOURERS AND THE INTERVENER CARPENTERS STILL HELD THE BARGAINING RIGHTS FOR THE EMPLOYEES OF THE RESPONDENT GRANTED BY THE BOARD'S CERTIFICATES DATED FEBRUARY 3RD AND FEBRUARY 6TH, 1964, RESPECTIVELY. THE BOARD FURTHER FOUND AT THE HEARING THAT HAVING REGARD TO THE PROVISIONS OF SECTION 5(1A) AND SECTION 46 OF THE ACT, THE INSTANT APPLICATION WAS TIMELY.

(FEBRUARY 14, 1969).

STATISTICAL TABLES FOR FEBRUARY 1969

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

		NUMBER FILED		
		FEBRUARY 1969	1ST 11 MONTHS OF 1968-69	FISCAL YE 1967-68
I.	CERTIFICATION	97	923	839
II.	DECLARATION TERMINATING BARGAINING RIGHTS	5	60	84
III.	DECLARATION OF SUCCESSOR STATUS	-	13	24
IV.	DECLARATION THAT STRIKE UNLAWFUL	1	34	34
V.	DECLARATION THAT LOCK-OUT UNLAWFUL	-	7	13
VI.	CONSENT TO PROSECUTE	3	90	90
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	13	153	161
VIII.	MISCELLANEOUS	9	73	67
	TOTAL	<u>128</u>	<u>1353</u>	<u>1312</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

		NUMBER		
		FEBRUARY 1969	1ST 11 MONTHS OF 1968-69	FISCAL YE 1967-68
	HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	77	946	797

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS
BOARD BY MAJOR TYPES

		NUMBER DISPOSED OF		
	FEBRUARY 1969	1ST 11 MTHS 1968-69	FISCAL YR. 1967-68	
I.	CERTIFICATION	62	925	853
II.	DECLARATION TERMINATING BARGAINING RIGHTS	11	62	86
III.	DECLARATION OF SUCCESSOR STATUS	2	17	15
IV.	DECLARATION THAT STRIKE UNLAWFUL	1	36	32
V.	DECLARATION THAT LOCK- OUT UNLAWFUL	-	6	12
VI.	CONSENT TO PROSECUTE	-	98	91
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	13	171	158
VIII.	MISCELLANEOUS	10	66	67
	TOTAL	<u>99</u>	<u>1381</u>	<u>1314</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS
BOARD BY TYPE AND DISPOSITION

	NUMBER OF APPLICATIONS			NUMBER OF EMPLOYEES*		
	FEBRUARY 1ST 11 MTHS 1969	1968-69	FISCAL YR. 1967-68	FEBRUARY 1ST 11 MTHS 1969	1968-69	1967-68

I. CERTIFICATION

GRANTED	44	626	597	950	19579	25137
DISMISSED	12	210	187	600	8000	10797
WITHDRAWN	6	89	69	160	1715	1663
TOTAL	<u>62</u>	<u>925</u>	<u>853</u>	<u>1710</u>	<u>29294</u>	<u>37597</u>

II. TERMINATION
OF BARGAINING
RIGHTS

GRANTED	3	31	39	478	1200	1048
DISMISSED	4	22	44	37	580	1008
WITHDRAWN	4	9	3	51	212	53
TOTAL	<u>11</u>	<u>62</u>	<u>86</u>	<u>566</u>	<u>1992</u>	<u>2109</u>

*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION (CONTINUED)

	NUMBER DISPOSED OF		
	FEBRUARY 1969	1ST 11 MTHS 1968-69	FISCAL YR. 1967-68

III. DECLARATION THAT STRIKE
UNLAWFUL

GRANTED	-	3	3
DISMISSED	-	2	3
WITHDRAWN	<u>1</u>	<u>31</u>	<u>26</u>
TOTAL	<u>1</u>	<u>36</u>	<u>32</u>

IV. DECLARATION THAT LOCKOUT
UNLAWFUL

GRANTED	-	-	-
DISMISSED	-	3	1
WITHDRAWN	<u>-</u>	<u>3</u>	<u>11</u>
TOTAL	<u>-</u>	<u>6</u>	<u>12</u>

V. CONSENT TO PROSECUTE

GRANTED	-	25	6
DISMISSED	-	13	12
WITHDRAWN	<u>-</u>	<u>60</u>	<u>73</u>
TOTAL	<u>-</u>	<u>98</u>	<u>91</u>

VI. COMPLAINT OF UNFAIR
PRACTICE IN EMPLOYMENT
(SECTION 65)

GRANTED	1	11	25
DISMISSED	2	44	42
WITHDRAWN	<u>10</u>	<u>116</u>	<u>93</u>
TOTAL	<u>13</u>	<u>171</u>	<u>160</u>

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF BY
THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	FEBRUARY 1969	1ST 11 MTHS 1968-69	FISCAL YR. 1967-68
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	1	13	20
POST-HEARING VOTE	2	41	43
BALLOTS NOT COUNTED	-	-	-
<u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	2	7	12
POST-HEARING VOTE	2	36	36
BALLOTS NOT COUNTED	-	1	3
TOTAL	<u>7</u>	<u>98</u>	<u>114</u>

*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY
THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	FEBRUARY 1969	1ST 11 MTHS 1968-69	FISCAL YR. 1967-68
*RESPONDENT UNION SUCCESSFUL	-	4	1
RESPONDENT UNION UNSUCCESSFUL	<u>2</u>	<u>23</u>	<u>19</u>
TOTAL	<u>2</u>	<u>27</u>	<u>20</u>

*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

CH, 1969



ONTARIO

Monthly Report



ONTARIO LABOUR RELATIONS BOARD
//

CASE LISTINGS MARCH 1969

	PAGE
1. CERTIFICATION	
(A) BARGAINING AGENTS CERTIFIED	1233
(B) APPLICATIONS DISMISSED	1250
(C) APPLICATIONS WITHDRAWN	1253
2. APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS	1255
3. APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS	1257
4. APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL	1258
5. APPLICATIONS FOR CONSENT TO PROSECUTE	1258
6. APPLICATION FOR CONSENT TO PROSECUTE (HOSPITAL ARBITRATION ACT)	1259
7. COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE)	1259
8. APPLICATION UNDER SECTION 33(2)	1260
9. APPLICATIONS UNDER SECTION 47A	1261
10. APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2)	1261
11. REFERENCE TO BOARD PURSUANT TO SECTION 79A	1262
12. APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION	1262
13. INDEXED ENDORSEMENTS	

CERTIFICATION

14086-67-R:	NORTHERN ELECTRIC COMPANY LIMITED	1263
15235-68-R:	ITT CANADA LTD.	1266
15412-68-R:	THE OTTAWA CITIZEN, A DIVISION OF SOUTHAM PRESS LIMITED	1268
15441-68-R:	THE CORPORATION OF THE COUNTY OF HALTON	1271
15521-68-R:	ELLIOTT RUBBER & PLASTIC LTD.	1273
15529-68-R:	DUFFERIN COUNTY BOARD OF EDUCATION	1276
15547-68-R:	BABCOCK & WILCOX CANADA LTD	1277
15573-68-R:	THE OTTAWA CITIZEN, A DIVISION OF SOUTHAM PRESS LIMITED	1280
15578-68-R:	ZELLER'S LIMITED	1283
15602-68-R:	ALDERSHOT CONTRACTORS EQUIPMENT RENTAL LIMITED	1285
15618-68-R:	FERRITRONICS LIMITED	1286

CERTIFICATION	(CONTINUED)	PAGE
15645-68-R:	MELNOR MANUFACTURING LIMITED	1288
15692-68-R:	FORMALL LIMITED	1290
15733-68-R:	ROLLINS LUMBER LIMITED	1292
15772-68-R:	THE FALK CORPORATION OF CANADA LIMITED	1294
15773-68-R:	ASHVALE TREE SURGEONS CO LTD	1296
15811-68-R:	THE SAVARIN LIMITED	1297
15812-68-R:	MATTHEWS GROUP LIMITED	1299
15842-68-R:	L & S HAULAGE LTD	1301
TERMINATION		
15678-68-R:	CLAUDE ABRAMS INDUSTRIES LTD. OPERATING AS PUBLIC OPTICAL	1302
15843-68-R:	REFFLINGHAUS CONSTRUCTION COMPANY LIMITED	1304
PROSECUTION		
15740-68-U:	THE FOUNDATION COMPANY OF CANADA LIMITED AND A. D. ROSS & COMPANY LIMITED	1305
15770-68-U:	FAGA FORMS LIMITED, ANTONIO FONTANO AND GUIDO MORRELLI	1307
15816-68-U:	FAGA FORMS LIMITED AND ANTONIO FONTANA	1308
SECTION 65		
15345-68-U:	SKINNER SCHOOL BUS LINES LIMITED	1309
15424-68-U:	THE CEMENTATION COMPANY (CANADA) LIMITED	1313
15752-68-U:	ARGO CONSTRUCTION LIMITED AND RONALD ROBILLARD	1319
SECTION 33(2)		
15562-68-M:	MOTOR WHEEL CORPORATION OF CANADA LTD	1321
SECTION 47A		
15610-68-M:	BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 210, AFL-CIO-CLC; COMBINED ROMAN CATHOLIC SEPARATE SCHOOLS, WALLACE- BURG; THE BOARD OF TRUSTEES OF THE COM- BINED ROMAN CATHOLIC SEPARATE SCHOOLS OF TILBURY	1323
15684-68-M:	MAMMY'S WONDER BAKERIES (A DIVISION OF GENERAL BAKERIES LIMITED) HAMILTON; MAMMY'S WONDER BAKERIES (A DIVISION OF GENERAL BAKERIES LIMITED) ST. CATHARINES; GENERAL BAKERIES LIMITED; GENERAL TRUCK DRIVERS' UNION, LOCAL 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA; RETAIL, WHOLESALE BAKERY & CONFECTIONERY WORKERS' UNION, LOCAL 461, OF THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL-CIO:CLC	1324
SECTION 63		
15549-68-M:	LOCAL 94 CANADIAN UNION OF PUBLIC EMPLOYEES	1327

	PAGE
SECTION 79(2)	
15200-68-M: CANADIAN UNION OF PUBLIC EMPLOYEES AND SHOEMAKER	1330
SECTION 79A	
15534-68-M: PIGOTT CONSTRUCTION CO. LIMITED	1332
15698-68-M: TURESKI CONSTRUCTION CO., MOIR CONSTRUCTION COMPANY LIMITED AND JACK HARPER CONSTRUCTION LTD.	1337
JURISDICTIONAL DISPUTES	
15650(A)-68-JD: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 AND THE FOUNDATION COMPANY OF CANADA LIMITED	1338
15748(B)-68-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493	1340
RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION	
15254-68-R: INLAND PUBLISHING CO., LIMITED	1341
15586-68-R: STEINBERG'S LIMITED	1342
RECONSIDERATION OF BOARD'S DECISION - PROSECUTION	
15487-68-U: BRAMPTON TRANSPORT LIMITED	1345
15488-68-U: BRAMPTON TRANSPORT LIMITED	1346
RECONSIDERATION OF BOARD'S DECISION - SECTION 65	
15309-68-U: ITT CANADA LTD.	1347
EXCERPTS FROM DECISIONS IN CONSTRUCTION INDUSTRY CASES	1350

STATISTICAL TABLES FOR MARCH 1969

TABLE

I.	APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD	1353
II.	HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD	1353
III.	APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY MAJOR TYPES	1354
IV.	APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY TYPE AND DISPOSITION	1355
V.	REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD	1357
VI.	REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD	1357

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD
DURING MARCH 1969

BARGAINING AGENTS CERTIFIED DURING MARCH

No VOTE CONDUCTED

15235-68-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) v. ITT CANADA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS ENGAGED ON A CO-OPERATIVE TRAINING BASIS WITH A UNIVERSITY OR COLLEGE." (74 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT THE EMPLOYEES IN THE REPAIR AND OVERHAUL DEPARTMENT ARE NOT INCLUDED IN THE BARGAINING UNIT)

(SEE INDEXED ENDORSEMENT PAGE 1266).

15262-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. AIMCO AUTOMOTIVE INDUSTRIES, DIVISION OF AIMCO INDUSTRIES LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MISSISSAUGA TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (200 EMPLOYEES IN THE UNIT).

15441-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE CORPORATION OF THE COUNTY OF HALTON (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT CHIEF PUBLIC HEALTH INSPECTOR, PERSONS ABOVE THE RANK OF CHIEF PUBLIC HEALTH INSPECTOR AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND ALL GRADUATE AND REGISTERED NURSES EMPLOYED BY THE RESPONDENT." (40 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 1271).

15529-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. DUFFERIN COUNTY BOARD OF EDUCATION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES, AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (29 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 1276).

15560-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. NORTH CENTENNIAL MANOR (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KAPUSKASING, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND OFFICE STAFF." (39 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

15596-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. RENFREW COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (24 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE EMPLOYEE OF THE RESPONDENT CLASSIFIED AS AUDIO-VISUAL TECHNICIAN IS NOT INCLUDED IN THE BARGAINING UNIT.

15620-68-R: SHOPMEN'S LOCAL UNION No. 757 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (AFFILIATED TO THE AFL, CIO AND CLC) (APPLICANT) v. WINDSOR METAL MASTERS, LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND CLERICAL STAFF, WATCHMEN, GUARDS AND EMPLOYEES ENGAGED IN FIELD ERECTION OR CONSTRUCTION WORK." (5 EMPLOYEES IN THE UNIT).

15630-68-R: TORONTO TYPOGRAPHICAL UNION NO. 91 (APPLICANT) v. FRANK BADER COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN COMPOSING ROOM WORK AT METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (2 EMPLOYEES IN THE UNIT).

15645-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) v. MELNOR MANUFACTURING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (31 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 1288).

15648-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. NORTHUMBERLAND AND DURHAM COUNTY BOARD OF EDUCATION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE UNITED COUNTIES OF NORTHUMBERLAND AND DURHAM ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR AND FOREMAN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (106 EMPLOYEES IN THE UNIT).

15653-68-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) v. E & W GROCERS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES IN METROPOLITAN TORONTO, REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (8 EMPLOYEES IN THE UNIT).

15661-68-R: OIL CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) v. ST. CLAIR CHEMICAL LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SARNIA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (30 EMPLOYEES IN THE UNIT).

15664-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. KENROC TOOLS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SUMMER VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (79 EMPLOYEES IN THE UNIT).

15667-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. LAMBTON COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR (24) HOURS PER WEEK ENGAGED IN MAINTENANCE, SERVICE AND PLANT OPERATIONS, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND OFFICE STAFF." (13 EMPLOYEES IN THE UNIT).

15670-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. ROY COWELL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (13 EMPLOYEES IN THE UNIT).

15675-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. ARTHUR G. MCKEE & COMPANY OF CANADA, LTD. (RESPONDENT)

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF LAMBTON ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (25 EMPLOYEES IN THE UNIT).

15677-68-R: UNITED GLASS & CERAMIC WORKERS OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) v. CHAMPLAIN READY MIXED CONCRETE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT ORILLIA, AND ALL EMPLOYEES OF THE RESPONDENT AT ITS DEPOTS AT HIGHWAY #69, PARRY SOUND, RAVENS CLIFF ROAD, HUNTSVILLE, AND HIGHWAY #11, BRACEBRIDGE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (18 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15685-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:
CLC (APPLICANT) v. M. LOEB LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES IN
SUDBURY, SAVE AND EXCEPT OFFICE STAFF, STORE MANAGERS AND PERSONS
ABOVE THE RANK OF STORE MANAGER." (88 EMPLOYEES IN THE UNIT).

15686-68-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH
THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA (APPLICANT) v. SMITH BEVERAGES LIMITED (RES-
PONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OSHAWA, SAVE AND EXCEPT
ROUTE MANAGERS, SALES SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK
OF ROUTE MANAGER, SALES SUPERVISOR AND FOREMAN, OFFICE STAFF AND
STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (20 EMPLOYEES
IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15689-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND
ORNAMENTAL IRON WORKERS, LOCAL UNION 721 (APPLICANT) v. ARCAN
EASTERN LTD. (RESPONDENT).

UNIT: "ALL IRON WORKERS IN THE EMPLOY OF THE RESPONDENT IN THE
COUNTIES OF PETERBOROUGH VICTORIA AND THE PROVISIONAL COUNTY OF
HALIBURTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE
THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

15691-68-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA
(UE) (APPLICANT) v. HI-GRADE DIE & TOOL CO. LTD. (RESPONDENT) v.
GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WELLAND, SAVE AND EXCEPT
FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."
(14 EMPLOYEES IN THE UNIT).

15692-68-R: COUNCIL OF CONCRETE-FORMING TRADE UNIONS (APPLICANT)
v. FORMALL LIMITED (RESPONDENT).

UNIT: "ALL IRONWORKERS, CONSTRUCTION LABOURERS, CEMENT MASONS AND
CEMENT MASONS' APPRENTICES, CARPENTERS AND CARPENTERS' APPRENTICES
IN THE EMPLOY OF THE RESPONDENT AND EMPLOYEES OF THE RESPONDENT EN-
GAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR
EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAIN-
TENANCE OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS
ABOVE THE RANK OF NON-WORKING FOREMAN IN METROPOLITAN TORONTO, THE
COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS
OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF
PICKERING IN THE COUNTY OF ONTARIO." (99 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 1290).

15699-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. HALIBURTON COUNTY BOARD OF EDUCATION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN MAINTENANCE, SERVICES, AND PLANT OPERATIONS, SAVE AND EXCEPT THE BUSINESS ADMINISTRATOR, PERSONS ABOVE THE RANK OF BUSINESS ADMINISTRATOR AND OFFICE STAFF." (16 EMPLOYEES IN THE UNIT).

15700-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. HALIBURTON COUNTY BOARD OF EDUCATION (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT SAVE AND EXCEPT BUSINESS ADMINISTRATOR, AND PERSONS ABOVE THE RANK OF BUSINESS ADMINISTRATOR." (3 EMPLOYEES IN THE UNIT).

15701-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) v. NORTH ATLANTIC FORMS LTD-FORMCO INC. ENTREPRISE EN PARTICIPATION - JOINT VENTURE (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

15707-68-R: BROTHERHOOD OF PAINTERS, DECORATORS & PAPERHANGERS OF AMERICA, GLAZIERS LOCAL UNION 1819 (APPLICANT) v. SEALITE GLASS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (30 EMPLOYEES IN THE UNIT).

15711-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. HECKETT ENGINEERING CO., DIVISION OF HARSCO CORPORATION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT PLANT NO. 14 OF THE DOMINION FOUNDRIES & STEEL LTD. IN HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (36 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15713-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) v. COVELLO BROS. LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (15 EMPLOYEES IN THE UNIT).

15716-68-R: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 124 (APPLICANT) v. CONSTRUCTEC INC. (RESPONDENT).

UNIT: "ALL PLASTERERS AND PLASTERERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

15720-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) v. PISAPIA CONSTRUCTION INCORPORATED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

15722-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE CORPORATION OF THE TOWNSHIP OF NEPEAN (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE COLLECTION AND DISPOSAL OF GARBAGE, SAVE AND EXCEPT SUPERINTENDENT, PERSONS ABOVE THE RANK OF SUPERINTENDENT, OFFICE STAFF, AND EMPLOYEES COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1021." (17 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15724-68-R: TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC (APPLICANT) v. KAYSER-ROTH OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT 455 HIGHBURY AVENUE, AT LONDON, SAVE AND EXCEPT DEPARTMENT HEADS, SUPERVISORS, FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF DEPARTMENT HEAD, SUPERVISOR, FOREMAN AND FORELADY, OFFICE AND CLERICAL STAFF (INCLUDING ENGINEERING DEPARTMENT) HOME WORKERS, DESIGN STUDIO PERSONNEL, SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (247 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15729-68-R: SERVICE EMPLOYEES' UNION, LOCAL 210, AFFILIATED WITH SERVICE EMPLOYEES' INTERNATIONAL UNION, A.F.L. - C.I.O. - C.L.C. (APPLICANT) v. ESSEX COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISORS AND OFFICE STAFF." (39 EMPLOYEES IN THE UNIT).

15733-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. ROLLINS LUMBER LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT FOXBORO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND EMPLOYEES IN THE RESPONDENT'S HOME IMPROVEMENT DIVISION ALREADY COVERED BY THE BOARD'S CERTIFICATE DATED NOVEMBER 5TH, 1965." (16 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 1292).

15734-68-R: BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL UNION 1891 (APPLICANT) v. NORTH YORK ACOUSTIC (RESPONDENT).

UNIT: "ALL PAINTERS AND PAINTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

15735-68-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) v. ALPINE BRAND MEAT PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (53 EMPLOYEES IN THE UNIT).

15736-68-R: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 204 AFFILIATED WITH S.E.I.U. A.F. OF L., C.I.O., C.L.C. (APPLICANT) v. TRINITY COLLEGE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, TEACHING AND PROFESSIONAL STAFF, OFFICE STAFF, LIBRARY STAFF, STUDENTS EMPLOYED DURING THE UNIVERSITY VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (42 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PORTERS AND SWITCHBOARD OPERATORS ARE INCLUDED IN THE TERM "OFFICE STAFF" AND ARE EXCLUDED FROM THE BARGAINING UNIT.

FOR THE PURPOSE OF CLARITY, THE BOARD DECLARED THAT CARPENTERS ARE INCLUDED IN THE BARGAINING UNIT.

15737-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. KIRKLAND LAKE BOARD OF EDUCATION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TIMISKAMING ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERINTENDENT, PERSONS ABOVE THE RANK OF SUPERINTENDENT, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (55 EMPLOYEES IN THE UNIT).

15746-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. KAISER JEEP OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (3 EMPLOYEES IN THE UNIT).

15753-68-R: TOBACCO WORKERS INTERNATIONAL UNION (A.F.L. & C.I.O. & C.L.C.) (APPLICANT) v. THEODORUS NIEMAYER MANUFACTURING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE TOWNSHIP OF BRANTFORD, SAVE AND EXCEPT FOREMAN, PERSONS ABOVE THE RANK OF FOREMAN, SALES AND OFFICE STAFF AND CHIEF ENGINEER." (34 EMPLOYEES IN THE UNIT).

15754-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO: CLC (APPLICANT) v. WALKER'S DIVISION OF GORDON MACKAY AND COMPANY LIMITED (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES IN SAULT STE. MARIE, SAVE AND EXCEPT OFFICE SUPERVISOR, PERSONS ABOVE THE RANK OF OFFICE SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (5 EMPLOYEES IN THE UNIT).

15756-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) v. PERMATEX - FEP LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ORANGEVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (4 EMPLOYEES IN THE UNIT).

15757-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) v. J. G. ADAMS COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ORANGEVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (22 EMPLOYEES IN THE UNIT).

15760-68-R: THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) v. S.K.D. MANUFACTURING CO. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT AMHERSTBURG, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (345 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT TIME-KEEPERS AND TIME STUDY MEN ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

15761-68-R: WAREHOUSEMEN, AND MISCELLANEOUS DRIVERS, LOCAL UNION 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. DAVID ASHLEY & COMPANY LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (19 EMPLOYEES IN THE UNIT).

15765-68-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 1687 (APPLICANT) v. K.V.C. ELECTRIC LIMITED (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY MILE RADIUS OF THE NORTH BAY POST OFFICE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

15766-68-R: METAL FOILS WORKERS UNION, LOCAL 23624, CANADIAN LABOUR CONGRESS (APPLICANT) v. CANADA FOILS, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS METAL PRODUCTS DIVISION AT BRACEBRIDGE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND LABORATORY STAFF." (42 EMPLOYEES IN THE UNIT).

15772-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) v. THE FALK CORPORATION OF CANADA LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, NIGHT SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN AND NIGHT SUPERVISOR, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (27 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 1294).

15773-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 183 (APPLICANT) v. ASHVALE TREE SURGEONS CO LTD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (14 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 1296).

15774-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO: CLC (APPLICANT) v. CANTEEN OF CANADA LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT STONEY CREEK, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER AND OFFICE STAFF." (6 EMPLOYEES IN THE UNIT).

(THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE CUSTOMER SERVICE SUPERVISOR IS NOT INCLUDED IN THE BARGAINING UNIT).

15779-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2466 (APPLICANT) v. ELLIS-DON LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF RENFREW, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

15781-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. BULOVA WATCH COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (36 EMPLOYEES IN THE UNIT).

15811-68-R: LOCAL 280 OF THE HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, A.F.L.-C.I.O.-C.L.C. (APPLICANT) v. THE SAVARIN LIMITED (RESPONDENT).

UNIT: "ALL FULL TIME AND PART TIME MALE AND FEMALE TAPMEN, BAR-TENDERS, BEVERAGE WAITERS, BAR BOYS AND IMPROVERS EMPLOYED IN THE BEVERAGE DEPARTMENTS OF THE RESPONDENT AT 366 BAY STREET, TORONTO, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER." (28 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 1297).

15815-68-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) v. WORKER'S CO-OP. (RESPONDENT).

UNIT: "ALL MEAT DEPARTMENT EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT FORT WILLIAM." (2 EMPLOYEES IN THE UNIT).

15822-68-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT) v. HULL-OTTAWA PLATING LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT OFFICE AND LABORATORY STAFF, FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (34 EMPLOYEES IN THE UNIT).

15824-68-R: LOCAL UNION 1375 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) v. CHIPPWA PUBLIC UTILITY COMMISSION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER AND OFFICE STAFF." (4 EMPLOYEES IN THE UNIT).

15826-68-R: GENERAL TRUCK DRIVERS' UNION LOCAL 879 (APPLICANT) v. LAX IRON & STEEL LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (31 EMPLOYEES IN THE UNIT).

15828-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) v. CYRUS J. MOULTON LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

15846-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) v. DILVAR CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

15847-68-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 1687 (APPLICANT) v. DERRO ELECTRIC CO. (RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

15854-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 721 (APPLICANT) v. CENTRAL RIGGING & CONTRACTING CO. (CANADA) LTD. (RESPONDENT).

UNIT: "ALL IRON WORKERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH, VICTORIA AND THE PROVISIONAL COUNTY OF HALIBURTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

15876-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) v. LAVICTOIRE FORMING AND CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (26 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

15303-68-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) v. MURRAY BROS. LUMBER CO., LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANING MILL AT BARRY'S BAY IN THE TOWNSHIP OF SHERWOOD IN THE COUNTY OF RENFREW, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, CLERKS, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (23 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	20
NUMBER OF PERSONS WHO CAST BALLOTS	21
BALLOTS SEGREGATED AND NOT COUNTED	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	16
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	4

15494-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (APPLICANT) v. COLUMBIAN CARBON (CANADA) LIMITED (RESPONDENT) v. CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (60 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	52
NUMBER OF PERSONS WHO CAST BALLOTS	50
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	49
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	1

15621-68-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) v. GILLIES BROS. & CO. LTD. (RESPONDENT) v. THE GILLIES BROS. EMPLOYEES' ASSOCIATION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT BRAESIDE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, SECURITY GUARDS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (216 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE SHIPPING CLERK AND CANTEEN CLERK ARE EXCLUDED FROM THE BARGAINING UNIT UNDER THE TERM OFFICE STAFF.

THE BOARD FURTHER NOTED THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED AS OFFICE STAFF INCLUDE PERSONS EMPLOYED IN BOTH THE "MILL" AND "MAIN" OFFICES.

THE BOARD FURTHER DECLARED THAT PERSONS CLASSIFIED BY THE RESPONDENT AS RETAIL OUTLET EMPLOYEES ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

THE BOARD FURTHER NOTED THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED AS WATCHMEN, ENGINEERING, CONSTRUCTION AND TECHNICAL CONTROL EMPLOYEES ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	205
NUMBER OF PERSONS WHO CAST BALLOTS	192
BALLOTS SEGREGATED AND NOT COUNTED	1
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	155
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	35

15623-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v.
STOUFFVILLE MACHINE AND TOOL WORKS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT STOUFFVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (42 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	39
NUMBER OF PERSONS WHO CAST BALLOTS	39
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	25
NUMBER OF BALLOTS MARKED IN FAVOUR OF STOUFFVILLE MACHINE EMPLOYEES ASSOCIATION	13

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

15226-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:
CLC (APPLICANT) v. S. S. KRESGE COMPANY LIMITED (K MART DIVISION)
(RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS K MART STORES AT SAULT STE. MARIE, REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (38 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	38
NUMBER OF PERSONS WHO CAST BALLOTS	38
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	20
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	18

15227-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:
CLC (APPLICANT) v. S. S. KRESGE COMPANY LIMITED (K MART DIVISION)
(RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS K MART STORES AT SAULT STE. MARIE, SAVE AND EXCEPT OFFICE STAFF, DEPARTMENT MANAGERS, PERSONS ABOVE THE RANK OF DEPARTMENT MANAGER, MANAGEMENT TRAINEES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (95 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	90
NUMBER OF PERSONS WHO CAST BALLOTS	90
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	47
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	43

15577-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183, (ROCK AND TUNNEL WORKERS' DIVISION) (APPLICANT) v. DRAVO OF CANADA LIMITED (RESPONDENT) v. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED AT THE FOLLOWING LOCATIONS: (1) COLEMAN MINE, LEVACK TOWNSHIP, ONTARIO (2) COPPER CLIFF NORTH MINE, MCKIM TOWNSHIP, ONTARIO (3) COPPER CLIFF SOUTH MINE, SNIDER TOWNSHIP, ONTARIO (4) LITTLE STOBIE MINE, BLEZARD TOWNSHIP, ONTARIO (5) KIRKWOOD MINE, GARSON TOWNSHIP, ONTARIO (6) STOBIE NO. 9, MCKIM TOWNSHIP, ONTARIO, SAVE AND EXCEPT SHIFT BOSSSES, MINE CAPTAINS, SUPERINTENDENTS, MASTER MECHANICS, ELECTRICAL FOREMEN, MECHANICAL FOREMEN, GENERAL FOREMEN THE PERSONS ABOVE THOSE RANKS AND ENGINEERING STAFF, OFFICE STAFF, STUDENTS EMPLOYED DURING SCHOOL VACATION PERIODS AND ALL PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND ALSO SAVE AND EXCEPT THOSE EMPLOYEES COVERED BY AN EXISTING COLLECTIVE AGREEMENT BETWEEN THE

RESPONDENT AND THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 2486." (719 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	657
NUMBER OF PERSONS WHO CAST BALLOTS	591
BALLOTS SEGREGATED AND NOT COUNTED	2
NUMBER OF SPOILED BALLOTS	5
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	399
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	185

15588-68-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. NADECO LIMITED (RESPONDENT) v. LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 597 (FORMERLY KNOWN AS THE INTERNATIONAL HOD CARRIERS BUILDING & COMMON LABOURERS UNION OF AMERICA LOCAL 597) (INTERVENER #1) v. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL #1071 (INTERVENER #2).

UNIT: "ALL CONSTRUCTION LABOURERS, CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF HOPE IN THE COUNTY OF DURHAM AND THE TOWNSHIPS OF SOUTH MONAGHAN, HAMILTON, HALDIMAND AND ALNWICK IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

#1 - NUMBER OF NAMES OF PERSONS ON VOTERS'
LIST 2

NUMBER OF PERSONS WHO CAST BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 597 (FORMERLY KNOWN AS THE INTERNATIONAL HOD CARRIERS BUILDING & COMMON LABOURERS UNION OF AMERICA LOCAL 597)	0

#2 - NUMBER OF NAMES OF PERSONS ON VOTERS'
LIST 2

NUMBER OF PERSONS WHO CAST BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL #1071	0

APPLICATIONS FOR CERTIFICATION DISMISSED DURING MARCH

No VOTE CONDUCTED

15436-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) v. RANEY BRADY (A PARTNERSHIP OF G. J. RANEY LIMITED AND C. T. BRADY LIMITED) (RESPONDENT). (6 EMPLOYEES).

15547-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. BABCOCK & WILCOX CANADA LTD. (RESPONDENT). (3 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 1277).

15573-68-R: OTTAWA TYPOGRAPHICAL UNION No. 102 (APPLICANT) v. THE OTTAWA CITIZEN, A DIVISION OF SOUTHAM PRESS LIMITED (RESPONDENT) v. THE OTTAWA NEWSPAPER GUILD, LOCAL 205 (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS). (21 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 1280).

15591-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. F. J. DAVEY HOME FOR THE AGED (ALGOMA) (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS). (5 EMPLOYEES).

15595-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. RENFREW COUNTY BOARD OF EDUCATION (RESPONDENT). (142 EMPLOYEES).

15602-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) v. ALDERSHOT CONTRACTORS EQUIPMENT RENTAL LIMITED (RESPONDENT). (8 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 1285).

15618-68-R: FERRITRONICS EMPLOYEE ASSOCIATION (APPLICANT) v. FERRITRONICS LIMITED (RESPONDENT). (48 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 1286).

15619-68-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION LOCAL 91, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. L & W AUTOMOTIVE SERVICE LTD. (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS). (30 EMPLOYEES).

15693-68-R: COUNCIL OF CONCRETE-FORMING TRADE UNIONS (APPLICANT) v. GAZA INVESTMENTS LIMITED (RESPONDENT). (NO EMPLOYEES).

15694-68-R: COUNCIL OF CONCRETE-FORMING TRADE UNIONS (APPLICANT) v. DELTANNE CONSTRUCTION LIMITED (RESPONDENT). (NO EMPLOYEES).

15696-68-R: COUNCIL OF CONCRETE-FORMING TRADE UNIONS (APPLICANT) v. DEL-ZOTTO HOMES (RESPONDENT). (NO EMPLOYEES).

15749-68-R: LAUNDRY, DRY CLEANING AND DYE HOUSE WORKERS' INTERNATIONAL UNION - LOCAL 531 (APPLICANT) v. FEASBY FABRIC CARE (LINWELL) LTD. (RESPONDENT) v. RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, A.F.L. C.I.O. C.L.C. AND ITS LOCAL 440 (INTERVENER). (17 EMPLOYEES).

15821-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1410 (APPLICANT) v. CANADIAN GENERAL ELECTRIC COMPANY LIMITED (RESPONDENT). (8 EMPLOYEES).

15842-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. L & S HAULAGE LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 1301).

15853-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 249 KINGSTON ONT. (APPLICANT) v. FRANKEL FORMWORK LTD. (RESPONDENT). (4 EMPLOYEES).

15860-68-R: LOCAL 666, UNITED ASSOCIATION OF JOURNEYMAN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (APPLICANT) v. COWAN & DICKHOUT LIMITED (RESPONDENT). (3 EMPLOYEES).

15867-68-R: LOCAL 303, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) v. COWAN & DICKHOUT LIMITED (RESPONDENT). (3 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

15302-68-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) v. MURRAY BROS. LUMBER Co., LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT ITS SAW MILL AT MADASASKA IN THE TOWNSHIP OF LYELL IN THE DISTRICT OF NIPISSING, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, CLERKS, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (86 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	80
NUMBER OF PERSONS WHO CAST BALLOTS	92
BALLOTS SEGREGATED AND NOT COUNTED	12
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	32
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	47
NUMBER OF SPOILED BALLOTS	1

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

14235-67-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL, CIO, CLC (APPLICANT) v. AUTOMATIC ELECTRIC (CANADA) LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT BROCKVILLE, SAVE AND EXCEPT ASSISTANT FOREMEN AND ASSISTANT SUPERVISORS, PERSONS ABOVE THE RANKS OF ASSISTANT FOREMAN AND ASSISTANT SUPERVISOR, FIELD SERVICE PERSONNEL, SPECIALISTS, PURCHASING AGENTS, SALESMEN AND SALES REPRESENTATIVES, NURSES AND NURSES' ASSISTANTS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, STUDENTS HIRED ON A COOPERATIVE TRAINING BASIS WITH SCHOOLS AND UNIVERSITIES, AND TRAINEES ON A GRADUATE TRAINING PROGRAM." (406 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	350
NUMBER OF PERSONS WHO CAST BALLOTS	351
BALLOTS SEGREGATED AND NOT COUNTED	13
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	85
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	252

14972-68-R: THE LUMBER AND SAWMILL WORKERS' UNION LOCAL 2995, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO-CLC (APPLICANT) v. VAL ALBERT MOTORS LTD. (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KAPUSKASING, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (11 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	10
NUMBER OF PERSONS WHO CAST BALLOTS	10
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	9

15576-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1081 (APPLICANT) v. ANGELSTONE LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PRESTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (120 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	103
NUMBER OF PERSONS WHO CAST BALLOTS	102
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	37
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	65

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING MARCH

15702-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) v. SCHRIBER BROTHERS (RESPONDENT) v. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 568 (INTERVENOR). (3 EMPLOYEES).

15703-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) v. NORTH ATLANTIC FORMS LIMITED (RESPONDENT).

15704-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) v. FORMCO INCORPORATED (RESPONDENT).

15715-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:
CIO:CLC (APPLICANT) v. A. EARLE HODGE COMPANY LIMITED (RESPONDENT).
(2 EMPLOYEES).

15721-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL
527 (APPLICANT) v. ALLAN MURRAY CONCRETE CONSTRUCTION (RESPONDENT).
(8 EMPLOYEES).

15728-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA
(APPLICANT) v. WELLYN CONSTRUCTION LTD. (RESPONDENT). (5 EMPLOYEES).

15759-68-R: THE BRICKLAYERS MASONS AND PLASTERERS INTERNATIONAL
UNION OF AMERICA LOCAL #10 KINGSTON ONT. (APPLICANT) v. E. GRAZIANO
BROS. 7 ELLSWORTH AVE. TORONTO ONT. (MASONRY CONTRACTORS)
(RESPONDENT). (18 EMPLOYEES).

15762-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
(APPLICANT) v. PEEL CONSTRUCTION COMPANY LIMITED (RESPONDENT).
(32 EMPLOYEES).

15763-68-R: TORONTO TYPOGRAPHICAL UNION No. 91 (APPLICANT) v.
ORCHID LABEL & PRINTING CO. LTD. (RESPONDENT). (6 EMPLOYEES).

15768-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL
UNION 247 (APPLICANT) v. MONTREAL STEEL & PRESTRESSED ERECTORS' LTD.
(RESPONDENT). (3 EMPLOYEES).

15825-68-R: CROWE FOUNDRY LIMITED EMPLOYEE ASSOCIATION (APPLICANT)
v. CROWE FOUNDRY LIMITED (RESPONDENT). (95 EMPLOYEES).

15844-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA,
LOCAL 597 (APPLICANT) v. POLLOCK-MCGIBBON (RESPONDENT). (2 EMPLOYEES).

15852-68-R: THE CANADIAN UNION OF CONSTRUCTION WORKERS (APPLICANT)
v. MEDITERRANEAN CONSTRUCTION (RESPONDENT) v. LABOURERS' INTER-
NATIONAL UNION OF NORTH AMERICA LOCAL 506 (INTERVENER) (6 EMPLOYEES).

15858-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA
(APPLICANT) v. DEWCON STRUCTURES LIMITED (RESPONDENT). (8 EMPLOYEES).

15875-68-R: THE BRICKLAYERS MASONS AND PLASTERERS INTERNATIONAL
UNION OF AMERICA LOCAL #30 BELLEVILLE ONT. (APPLICANT) v. J. D. COAD
CONSTRUCTION COMPANY LIMITED 177 DAVIS STREET TRENTON ONT.
(RESPONDENT) v. TRENTON CONSTRUCTION WORKERS ASSOCIATION, LOCAL NO.
52, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA
(INTERVENER). (8 EMPLOYEES).

15922-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. NORTH
BAY BOARD OF EDUCATION (RESPONDENT). (80 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED
OF DURING MARCH

15434-68-R: KAP IMPERIAL SERVICE STATION (APPLICANT) v. THE LUMBER & SAWMILL WORKERS' UNION LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (RESPONDENT). (GRANTED).

UNIT: "ALL EMPLOYEES OF THE APPLICANT AT KAPUSKASING, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	4
NUMBER OF PERSONS WHO CAST BALLOTS	4
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	0
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	4

15510-68-R: PHILIP GORDON & ASSOCIATES (APPLICANT) v. RETAIL CLERKS INTERNATIONAL ASSOCIATION (RESPONDENT). (2 EMPLOYEES) (GRANTED).

15511-68-R: Sentry Department Stores Limited (OPERATING UNDER THE NAME G.E.M. STORES (1965) (APPLICANT) v. RETAIL CLERKS INTERNATIONAL ASSOCIATION (RESPONDENT). (GRANTED).

UNIT: "ALL EMPLOYEES OF THE APPLICANT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AT ITS STORE AT OTTAWA, SAVE AND EXCEPT STORE MANAGER, ASSISTANT STORE MANAGER, MERCHANDISING DEPARTMENT MANAGERS, DEPARTMENT MANAGERS, FRONT OFFICE SUPERVISOR, AND PERSONS ABOVE THOSE RANKS, OFFICE STAFF, SECURITY GUARDS AND PERSONS COVERED BY BARGAINING UNIT #1, REFERRED TO IN THE BOARD'S DECISION DATED SEPTEMBER 5TH, 1968, IN BOARD FILE 13756-67-R WHEREIN THE RESPONDENT IN THIS MATTER WAS CERTIFIED AS BARGAINING AGENT FOR THE ABOVE UNIT OF EMPLOYEES OF THE APPLICANT." (73 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	43
NUMBER OF PERSONS WHO CAST BALLOTS	43
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	16
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	27

15544-68-R: EMPLOYEES OF MEL'S EXPRESS LIMITED (APPLICANT) V. GENERAL TRUCK DRIVERS UNION LOCAL 938 (RESPONDENT) V. MEL'S EXPRESS LIMITED (INTERVENER). (DISMISSED).

UNIT: "ALL EMPLOYEES OF MEL'S EXPRESS LIMITED WORKING AT OR OUT OF BRADFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (41 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	36
NUMBER OF PERSONS WHO CAST BALLOTS	32
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	17
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	15

15658-68-R: ROGER C. RITTER (APPLICANT) V. INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (RESPONDENT) V. LOBLAW GROCETERIAS CO., LIMITED (EMPLOYER). (GRANTED).

UNIT: "ALL STORE-SERVICE EMPLOYEES OF LOBLAW GROCETERIAS CO., LIMITED AT TORONTO, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (12 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	13
NUMBER OF PERSONS WHO CAST BALLOTS	13
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	1
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	12

15678-68-R: CLAUDE ABRAMS INDUSTRIES LTD. OPERATING AS PUBLIC OPTICAL (APPLICANT) V. INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE U.S.A. & CANADA (RESPONDENT). (12 EMPLOYEES). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1302).

15680-68-R: GROUP OF EMPLOYEES FOR CUTTING LIMITED (APPLICANT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (RESPONDENT). (36 EMPLOYEES). (GRANTED).

15843-68-R: REFFLINGHAUS CONSTRUCTION COMPANY LIMITED (APPLICANT) V. THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (COUNTIES OF OXFORD, HURON, PERTH, MIDDLESEX, BRUCE AND ELGIN) (RESPONDENT). (2 EMPLOYEES). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1304).

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING
MARCH

15771-68-R: RETAIL STORE EMPLOYEES UNION LOCAL No. 832 (APPLICANT) v. DRYDEN 5¢ TO \$1.00 STORE LIMITED (RESPONDENT) v. RETAIL CLERKS INTERNATIONAL ASSOCIATION (PREDECESSOR TRADE UNION). (GRANTED).

15783-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1081 (APPLICANT) v. EARL'S CEMENT BREAKING & DRILLING (RESPONDENT). (GRANTED).

15784-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1081 (APPLICANT) v. SCHULTZ CONSTRUCTION LIMITED (RESPONDENT). (GRANTED).

15785-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1081 (APPLICANT) v. ROBERTSON-YATES CORPORATION LIMITED (RESPONDENT). (GRANTED).

15786-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1081 (APPLICANT) v. FRED UNGER & SON LTD. (RESPONDENT). (GRANTED).

15787-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1081 (APPLICANT) v. CECIL SHAVER CONSTRUCTION (RESPONDENT). (GRANTED).

15788-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1081 (APPLICANT) v. CHUTE CONSTRUCTION (RESPONDENT). (GRANTED).

15789-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1081 (APPLICANT) v. WILLIAM MENARY CONSTRUCTION LTD. (GRANTED).

15790-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1081 (APPLICANT) v. MILLER CONSTRUCTION (RESPONDENT). (GRANTED).

15791-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1081 (APPLICANT) v. W. A. McDougall LTD. (RESPONDENT). (GRANTED).

15792-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1081 (APPLICANT) v. G. S. WARK (RESPONDENT). (GRANTED).

15793-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1081 (APPLICANT) v. HEWSON & SON (RESPONDENT). (GRANTED).

15794-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1081 (APPLICANT) v. THE TOPE CONSTRUCTION CO. LTD. (RESPONDENT). (GRANTED).

15795-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1081 (APPLICANT) v. TIDEY CONSTRUCTION CO. LTD. (RESPONDENT). (GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

MARCH

15054-68-U: WESTERN CAISSENS LIMITED (APPLICANT) v. LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION 183, AND INTERNATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 506, AND MICHAEL J. REILLY AND JACK WATSON (RESPONDENTS). (WITHDRAWN).

15833-68-U: FRASER-BRACE ENGINEERING COMPANY LIMITED (APPLICANT) v. ARMAND AUBREY ET AL (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING MARCH

15671-68-U: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 210, AFL:CIO:CLC (APPLICANT) v. KENT COUNTY SEPARATE SCHOOL BOARD (RESPONDENT). (WITHDRAWN).

15740-68-U: THE FOUNDATION COMPANY OF CANADA LIMITED AND A.D. ROSS & COMPANY LIMITED (APPLICANTS) v. GERARD BLAIS, RICHARD R. BLAIS, ROGER LALANDE, NORMAND PACQUETTE, PAUL AUGER, RALPH GIBSONS, RONALD McGRAW, AND OMAR LEBLANC AND ANDRE LALANDE (RESPONDENTS). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 1305).

15770-68-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) v. FAGA FORMS LIMITED, ANTONIO FONTANO AND GUIDO MORRELLI (RESPONDENTS). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 1307).

15816-68-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) v. FAGA FORMS LIMITED AND ANTONIO FONTANA (RESPONDENTS). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 1308).

APPLICATION FOR CONSENT TO PROSECUTE (HOSPITAL ARBITRATION ACT)

DISPOSED OF DURING MARCH

5-68-PH: STRATFORD HOSPITAL EMPLOYEES' UNION, LOCAL 424, CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. STRATFORD GENERAL HOSPITAL CORPORATION (RESPONDENT). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF

DURING MARCH

15150-68-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (COMPLAINANT) v. DRAVO OF CANADA LIMITED (RESPONDENT). (WITHDRAWN).

15345-68-U: THE AMALGAMATED TRANSIT UNION, DIVISION 741, LONDON, ONTARIO (COMPLAINANT) v. SKINNER SCHOOL BUS LINES LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1309).

15424-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. THE CEMENTATION COMPANY (CANADA) LIMITED (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 1313).

15495-68-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) v. CORPORATION OF THE COUNTY OF MIDDLESEX (RESPONDENT) (WITHDRAWN).

15584-68-U: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL NO. 46 (COMPLAINANT) v. A. & G. SHANKS PLUMBING & HEATING LIMITED (RESPONDENT). (WITHDRAWN).

15622-68-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (COMPLAINANT) v. PAUL DAOUST CONSTRUCTION LIMITED (RESPONDENT). (WITHDRAWN).

15643-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. A B C STEEL BUILDINGS LIMITED (RESPONDENT). (WITHDRAWN).

15662-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. A B C STEEL BUILDINGS LIMITED (RESPONDENT). (WITHDRAWN).

15674-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. KENROC TOOLS LTD. (RESPONDENT). (WITHDRAWN).

15687-68-U: HOTEL, MOTEL, RESTAURANT EMPLOYEES UNION LOCAL 899
A.F.L., C.I.O., C.L.C. (COMPLAINANT) v. KING GEORGE RESTAURANT
(REGISTERED) (RESPONDENT). (WITHDRAWN).

15717-68-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (COMPLAINANT) v.
PARAGON TOOLS COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

15718-68-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (COMPLAINANT) v.
PARAGON TOOLS COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

15732-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. KENROC
TOOLS LTD. (RESPONDENT). (WITHDRAWN).

15743-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. A B C
STEEL BUILDINGS LIMITED (RESPONDENT). (WITHDRAWN).

15744-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. KENROC
TOOLS LTD. (RESPONDENT). (WITHDRAWN).

15745-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. A B C
STEEL BUILDINGS LIMITED (RESPONDENT). (WITHDRAWN).

15752-68-U: GERALD O'NEILL (COMPLAINANT) v. ARGO CONSTRUCTION
LIMITED AND RONALD ROBILLARD (RESPONDENTS). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1319).

15767-68-U: AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH
AMERICA, AFL-CIO, CLC (COMPLAINANT) v. ALPINE BRAND MEAT PRODUCTS
LTD. (RESPONDENT). (WITHDRAWN).

15895-68-U: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772
(COMPLAINANT) v. RIVERSIDE POULTRY COMPANY LIMITED (RESPONDENT).
(WITHDRAWN).

APPLICATION UNDER SECTION 33(2) DISPOSED OF DURING MARCH

15562-68-M: MOTOR WHEEL CORPORATION OF CANADA LTD. (APPLICANT) v.
THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA (U.A.W. - A.F.L. - C.I.O.) AND ITS LOCAL
127 (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 1321).

APPLICATIONS UNDER SECTION 47A DISPOSED OF DURING MARCH

14959-68-M: HAMILTON MUNICIPAL EMPLOYEES, LOCAL 167 OF THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. HAMILTON-WENTWORTH HEALTH UNIT (RESPONDENT). (GRANTED).

UNIT: "ALL EMPLOYEES OF HAMILTON-WENTWORTH HEALTH UNIT SAVE AND EXCEPT EXECUTIVE ASSISTANT, CHIEF HEALTH INSPECTOR, PSYCHOLOGIST, PSYCHOMETRIST, SOCIAL HEALTH WORKER, GENERAL CLERK, AND NURSING HOME INSPECTOR."

THE BOARD FURTHER FOUND THAT THE APPROPRIATE BARGAINING UNIT COMPRISES ONLY THOSE EMPLOYEES OF THE HEALTH DEPARTMENT BOUND BY THE COLLECTIVE AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF HAMILTON AND THE HAMILTON MUNICIPAL EMPLOYEES, LOCAL UNION 167 OF THE CANADIAN UNION OF PUBLIC EMPLOYEES AND THE CORRESPONDING CLASSIFICATIONS IN THE FORMER WENTWORTH COUNTY HEALTH UNIT.

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	68
NUMBER OF PERSONS WHO CAST BALLOTS	65
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	64
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	1

15742-68-M: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. NORTH BAY BOARD OF EDUCATION, AND NORTH BAY COLLEGIATE INSTITUTE BOARD (RESPONDENTS). (DISMISSED).

APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING

MARCH

15200-68-M: RIDGETOWN DISTRICT HIGH SCHOOL BOARD (APPLICANT) v. CANADIAN UNION OF PUBLIC EMPLOYEES AND GEORGE SHOEMAKER (RESPONDENTS). (SEE INDEXED ENDORSEMENT PAGE 1330).

15751-68-M: THE UNITED STEELWORKERS OF AMERICA (APPLICANT) v. FEDERAL WIRE & CABLE COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

REFERENCE TO BOARD PURSUANT TO SECTION 79A

15534-68-M: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (TRADE UNION) v. PIGOTT CONSTRUCTION CO. LIMITED (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 1332).

15698-68-M: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (TRADE UNION) v. TURESKI CONSTRUCTION CO., MOIR CONSTRUCTION COMPANY LIMITED AND JACK W. HARPER CONSTRUCTION LTD. (EMPLOYERS).

(SEE INDEXED ENDORSEMENT PAGE 1337).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

15254-68-R: LOCAL 12-L, LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION (APPLICANT) v. INLAND PUBLISHING CO., LIMITED (RESPONDENT) v. INTERNATIONAL BROTHERHOOD OF BOOKBINDERS LOCAL #28 (INTERVENER). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 1341).

15539-68-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) v. SPURRELL'S I.G.A. (RESPONDENT) v. RETAIL CLERKS INTERNATIONAL ASSOCIATION (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

15586-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) v. STEINBERG'S LIMITED (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 1342).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 65

15309-68-U: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (COMPLAINANT) v. ITT CANADA LTD. (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 1347).

INDEXED ENDORSEMENTS - CERTIFICATION

14086-67-R: COMMUNICATIONS WORKERS OF AMERICA, AFL, CIO & CLC (APPLICANT) v. NORTHERN ELECTRIC COMPANY LIMITED (RESPONDENT) NORTHERN ELECTRIC EMPLOYEES' ASSOCIATION (INTERVENER #1) v. UNITED STEELWORKERS OF AMERICA (INTERVENER #2).

BEFORE: J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: MARTIN LEVINSON AND B. MATHER FOR THE APPLICANT, JOHN P. SANDERSON, F.R. VON VEH AND CLAUDE HARARI FOR THE RESPONDENT, IAN SCOTT AND G.P. MEEHAN FOR INTERVENER #1, LORNE INGLE, ROBERT BOUCHARD, YVON THEORET AND DOUGLAS RICHARDSON FOR INTERVENER #2.

DECISION OF THE BOARD: MARCH 24, 1969.

• • •

2. THIS MATTER CAME ON FOR CONTINUATION OF HEARING ON MARCH 13TH, 1969, TO HEAR THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT DATED NOVEMBER 6TH, 1968, AS AMENDED, CONCERNING THE COMPOSITION OF THE BARGAINING UNIT AND ALL OUTSTANDING ISSUES.

3. THE APPLICANT IS CURRENTLY THE BARGAINING AGENT FOR ALL EMPLOYEES OF THE WESTERN REGION INSTALLATION OF THE RESPONDENT WHO HAVE THEIR HEADQUARTERS IN TORONTO AND WHO ARE ASSIGNED TO THE FOLLOWING BASE LOCATIONS: TORONTO, ONTARIO, HAMILTON, ONTARIO, LONDON, ONTARIO, NORTH BAY, ONTARIO, FORT WILLIAM - PORT ARTHUR, ONTARIO, WINNIPEG, MANITOBA, REGINA, SASKATCHEWAN, CALGARY, ALBERTA AND WHO ARE EMPLOYED IN CONNECTION WITH THE INSTALLATION OF COMMUNICATIONS AND RELATED EQUIPMENT, WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT.

4. IT WAS AGREED THAT INTERVENER #1 IS CURRENTLY THE BARGAINING AGENT FOR ALL HOURLY RATED NON-SUPERVISORY EMPLOYEES IN THE INSTALLATION DEPARTMENT AND IN THE OUTSIDE PLANT DEPARTMENT EMPLOYED IN THE RESPONDENT'S EASTERN REGION. THE EASTERN REGION COVERS ALL OF CANADA SITUATE EAST OF A LINE WHICH RUNS THROUGH THE TOWN OF BRIGHTON, ONTARIO. THOSE PARTS OF CANADA WHICH ARE SITUATE WEST OF THE BRIGHTON LINE ARE INCLUDED IN THE WESTERN REGION. AS STATED ABOVE, THE APPLICANT CURRENTLY BARGAINS FOR THE INSTALLERS WHO ARE EMPLOYED IN THE WESTERN REGION. THE APPLICANT IN THE INSTANT CASE SEEKS TO BE CERTIFIED AS BARGAINING AGENT FOR THOSE EMPLOYEES REPRESENTED BY INTERVENER #1 WHO ARE EMPLOYED BY THE RESPONDENT IN THAT PART OF THE EASTERN REGION WHICH LIES WITHIN THE PROVINCE OF ONTARIO.

5. THE RESPONDENT HAS, FOR ADMINISTRATIVE PURPOSES, DIVIDED CANADA INTO TWO REGIONS DESCRIBED ABOVE. THESE REGIONS WERE ESTABLISHED WITHOUT REGARD FOR PROVINCIAL BOUNDARIES IN ORDER TO SERVE THE BEST INTERESTS OF THE RESPONDENT. THE EMPLOYEES EMPLOYED IN THE INSTALLATION AND OUTSIDE PLANT DEPARTMENTS, WHOM WE SHALL REFER TO SIMPLY AS INSTALLERS, WHILE WORKING OUT OF THE REGIONAL OFFICE AT MONTREAL MAY BE BASED FROM TIME TO TIME IN ANY PROVINCE OF CANADA EAST OF BRITTON AND MAY ON OCCASION WORK ON PROJECTS OUTSIDE OF CANADA. OCCASIONALLY, SUCH EMPLOYEES MAY BE ASSIGNED TEMPORARILY TO PROJECTS IN THE WESTERN REGION. SIMILARLY, INSTALLERS FROM THE WESTERN REGION MAY BE TEMPORARILY ASSIGNED TO WORK WITH INSTALLERS IN THE EASTERN REGION.

6. THE RESPONDENT AND INTERVENER #1 OPPOSED THIS APPLICATION AND TOOK THE POSITION THAT THE ONLY APPROPRIATE BARGAINING UNIT WOULD BE ALL INSTALLERS OF THE RESPONDENT EMPLOYED IN THE EASTERN REGION. IN SUPPORT OF THEIR POSITION, THE RESPONDENT AND INTERVENER #1 ASKED THE BOARD TO APPLY ITS USUAL CRITERIA TO DETERMINE THE APPROPRIATENESS OF THE BARGAINING UNIT AND TOOK THE POSITION THAT IF SUCH CRITERIA WERE APPLIED THE BOARD WOULD BE IMPELLED TO FIND THAT THE APPROPRIATE BARGAINING UNIT WOULD ENCOMPASS ALL INSTALLERS IN THE RESPONDENT'S EASTERN REGION. THE FIVE CRITERIA UPON WHICH THEY RELIED ARE: FUNCTIONAL COHERENCE, INTERDEPENDENCE, TRANSFERABILITY, CUSTOM AND PRACTICE, AND COMMUNITY OF INTEREST. THE BOARD WAS REFERRED TO EVIDENCE WHICH TENDED TO ESTABLISH THAT THE ABOVE CRITERIA APPLIED TO THE INSTALLERS REPRESENTED BY THE INTERVENER #1 IN THE EASTERN REGION.

7. IT WAS FURTHER ARGUED BY THE RESPONDENT THAT THE BOARD'S JURISDICTION IS LIMITED BY SECTION 6(1) OF THE ACT TO DETERMINING "THE UNIT OF EMPLOYEES THAT IS APPROPRIATE FOR COLLECTIVE BARGAINING". IT WAS THE RESPONDENT'S CONTENTION THAT IF EFFECT IS GIVEN TO THE WORDS QUOTED ABOVE THE BOARD MUST FIND THAT BECAUSE OF THE COMMUNITY OF INTEREST SHARED BY THE INSTALLERS IN THE EASTERN REGION AND THE FACT THAT THE BARGAINING PRACTICE OF THE PARTIES HAS IGNORED PROVINCIAL BOUNDARIES AND IF CONSIDERATION IS GIVEN TO THE ADMINISTRATIVE STRUCTURE OF THE RESPONDENT, THERE IS ONLY ONE VIABLE BARGAINING UNIT WHICH CONSISTS OF ALL INSTALLERS IN THE EASTERN REGION. IT WAS SUGGESTED THAT IF THE BOARD WERE TO FIND OTHERWISE CHAOS WOULD FOLLOW SINCE THE BARGAINING UNIT PROPOSED BY THE RESPONDENT IS THE MOST ECONOMIC.

8. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT IT CANNOT AGREE WITH THE POSITION TAKEN BY THE RESPONDENT AND INTERVENER #1 WITH RESPECT TO THE DESCRIPTION OF THE APPROPRIATE BARGAINING UNIT IN THIS MATTER. THE WORDS "THE UNIT OF EMPLOYEES THAT IS APPROPRIATE FOR COLLECTIVE BARGAINING" AS USED IN SECTION 6(1) HAVE NEVER

BEEN CONSTRUED BY THE BOARD TO MEAN THAT THERE IS ONLY ONE APPROPRIATE BARGAINING UNIT IN EACH CASE. A COMMON EXAMPLE OF THE BOARD'S PRACTICE IN DETERMINING THAT THERE CAN BE MORE THAN ONE APPROPRIATE BARGAINING UNIT IS THE SITUATION WITH RESPECT TO STATIONARY ENGINEERS IN INDUSTRY. A CRAFT BARGAINING UNIT OF STATIONARY ENGINEERS MAY BE REPRESENTED BY A STATIONARY ENGINEERS UNION AND THE REMAINING EMPLOYEES MAY BE REPRESENTED IN AN APPROPRIATE BARGAINING UNIT BY ANOTHER TRADE UNION. ON THE OTHER HAND, IT IS COMMON TO FIND THAT ALL EMPLOYEES INCLUDING THE STATIONARY ENGINEERS ARE INCLUDED IN ONE APPROPRIATE BARGAINING UNIT. SIMILARLY, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD MAY BE REPRESENTED IN A SEPARATE APPROPRIATE BARGAINING UNIT OR THEY MAY BE INCLUDED IN AN ALL EMPLOYEE BARGAINING UNIT.

9. ON THE FACTS OF THIS CASE, IT IS QUITE ACCURATE TO SAY THAT IF THE PROVINCE OF ONTARIO HAD A PROVINCIAL BOUNDARY WHICH ENCOMPASSED ALL OF EASTERN CANADA THAT IS PRESENTLY INCLUDED IN THE RESPONDENT'S EASTERN REGION, THE BOARD, IN APPLYING THE CRITERIA REFERRED TO ABOVE, WOULD FIND THE APPROPRIATE BARGAINING UNIT TO INCLUDE ALL INSTALLERS IN THE RESPONDENT'S EASTERN REGION. HOWEVER, THE FACT IS THAT THE PROVINCE OF ONTARIO ONLY ENCOMPASSES A PORTION OF THE RESPONDENT'S EASTERN REGION.

10. SINCE THE BOARD, IN ITS DECISION IN THIS MATTER DATED FEBRUARY 11TH, 1969, DETERMINED THAT IT HAS CONSTITUTIONAL JURISDICTION OVER THE RESPONDENT'S INSTALLERS WHEN EMPLOYED IN ONTARIO, THE BOARD IS LIMITED BY SECTION 6(1) OF THE ACT TO DETERMINING THE UNIT OF EMPLOYEES (IN ONTARIO) THAT IS APPROPRIATE FOR COLLECTIVE BARGAINING. WE ACCORDINGLY FIND THAT SECTION 6(1) DOES NOT GIVE THE BOARD JURISDICTION TO FIND THE MOST APPROPRIATE BARGAINING UNIT IN THE ABSTRACT. SECTION 6(1), IN OUR OPINION, GIVES THE BOARD JURISDICTION TO FIND THE UNIT WITHIN THE TERRITORIAL JURISDICTION OF THE BOARD WHICH IS APPROPRIATE FOR COLLECTIVE BARGAINING. IF WE WERE TO FIND OTHERWISE, NO ONE WOULD HAVE JURISDICTION OVER THE BARGAINING UNIT, IN VIEW OF OUR DECISION OF FEBRUARY 11TH, 1969, WHEREIN WE FOUND THAT THIS BOARD HAD EXCLUSIVE JURISDICTION OVER THE INSTALLERS WHEN EMPLOYED IN ONTARIO.

11. WHILE THE INSTALLERS WHEN EMPLOYED IN ONTARIO SHARE A COMMUNITY OF INTEREST BECAUSE OF INTERCHANGE OR TRANSFERABILITY, ETC., WITH OTHER INSTALLERS IN THE EASTERN REGION AND INDEED WITH INSTALLERS IN THE WESTERN REGION, THAT FACT DOES NOT PRECLUDE THE BOARD FROM FINDING THAT INSTALLERS EMPLOYED IN ONTARIO SHARE THE SAME COMMUNITY OF INTEREST FOR SIMILAR REASONS WITH OTHER INSTALLERS EMPLOYED IN ONTARIO. THEREFORE, APPLYING THE CRITERIA REFERRED

TO ABOVE TO THE INSTALLERS WITHIN THE TERRITORIAL JURISDICTION OF THE BOARD, WE FIND ON ALL THE EVIDENCE THAT ALL EMPLOYEES OF THE RESPONDENT IN THE INSTALLATION DEPARTMENT AND OUTSIDE PLANT DEPARTMENT EMPLOYED IN ONTARIO, SAVE AND EXCEPT FOREMEN AND INSTALLATION SUPERVISORS, PERSONS ABOVE THE RANKS OF FOREMAN AND INSTALLATION SUPERVISOR, OFFICE STAFF AND PERSONS COVERED BY THE SUBSTANDING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

12. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON FEBRUARY 15TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

13. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

14. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT AND THE INTERVENER #1.

15. THE MATTER IS REFERRED TO THE REGISTRAR.

15235-68-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) v. ITT CANADA LTD. (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS H.F. IRWIN AND O. HODGES.

APPEARANCES AT THE HEARING: L. ARNOLD, R. RUSSELL FOR THE APPLICANT AND B.H. STEWART, J. MACKAY, C. PARENT FOR THE RESPONDENT.

DECISION OF THE BOARD: MARCH 19, 1969.

1. THE BOARD RENDERED ITS DECISION IN THIS MATTER ON DECEMBER 23RD, 1968. 1968 DECEMBER MONTHLY REPORT, O.L.R.B. 896. ONE OF THE MAJOR FACTORS THAT THE BOARD CONSIDERED WAS THE ANTICIPATED AMALGAMATION OF GENERAL CONTROLS (CANADIAN) LTD. AND ITT CANADA LIMITED.

IT APPEARED AT THE TIME OF THE INITIAL HEARING THAT BOTH COMPANIES WERE PROCEEDING TO AMALGAMATION, BOTH LEGALLY AND IN FACT.

2. SUBSEQUENT TO THE HEARING THE BOARD WAS ADVISED THAT THERE WERE CERTAIN ERRORS IN THE TESTIMONY OF THE RESPONDENT WHICH THE RESPONDENT ADMITTED. THE BOARD WAS SPECIFICALLY ADVISED THAT SOME OF THE FACTS OF THE PROPOSED AMALGAMATION WHICH HAD BEEN TENDERED IN EVIDENCE WERE IN ERROR AND HAD BEEN INADVERTENTLY TENDERED. THE FACTOR OF AMALGAMATION WAS A SIGNIFICANT CONSIDERATION IN THE BOARD'S DECISION OF DECEMBER 23RD, 1968. AT THE INITIAL HEARING, BECAUSE OF THE INTERWEAVING OF THE LEGAL CONCEPT OF AMALGAMATION WITH THE INDUSTRIAL FACTS AND CONSIDERING THE FACTS IN THAT PARTICULAR CONTEXT WE DECIDED TO DISMISS THE APPLICATION.

3. AT PRESENT THE FACTORS OF AMALGAMATION ON WHICH THE BOARD HAD ACTED ARE ABSENT SO THAT THIS APPLICATION IS NOT AS COMPLEX AS IT FORMERLY APPEARED AND THEREFORE DEMANDS DIFFERENT CONSIDERATIONS.

4. THE BOARD HAVING ACTED ON FACTS WHICH WERE IN ERROR, THE DECISION OF DECEMBER 23RD, 1968 IS HEREBY REVOKED.

5. HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES AT THE VARIOUS HEARINGS THE BOARD THEREFORE FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS ENGAGED ON A CO-OPERATIVE TRAINING BASIS WITH A UNIVERSITY OR COLLEGE, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

6. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT THE EMPLOYEES IN THE REPAIR AND OVERHAUL DEPARTMENT ARE NOT INCLUDED IN THE BARGAINING UNIT.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON OCTOBER 25TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION, AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

15412-68-R: OTTAWA TYPOGRAPHICAL UNION No. 102 (APPLICANT) v.
THE OTTAWA CITIZEN, A DIVISION OF SOUTHAM PRESS LIMITED
(RESPONDENT) v. OTTAWA NEWSPAPER GUILD, LOCAL 205 (INTERVENER)
v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS A. MAIN
AND F.W. MURRAY.

APPEARANCES AT THE HEARING: IAN SCOTT, JAMES DUFFY AND
TERRY KEARNEY FOR THE APPLICANT, C.A. MORLEY, EDGAR LEIGH
AND S. ROBERTS FOR THE RESPONDENT, DAVID W. SCOTT AND
FREDERICK SEGUIN FOR THE INTERVENER, C. THOMAS AND J.A.
POPE FOR THE OBJECTORS.

DECISION OF THE BOARD: MARCH 18, 1969.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE RESPONDENT SUBMITTED THAT MOST OF THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED ARE COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND OTTAWA PRINTING CRAFTS UNION. OTTAWA PRINTING CRAFTS UNION, ALTHOUGH SERVED WITH NOTICE OF THESE PROCEEDINGS, DID NOT INTERVENE OR PARTICIPATE IN THE HEARINGS IN THIS MATTER.

2. THE EVIDENCE ESTABLISHED THAT THE OTTAWA PRINTING CRAFTS UNION AND THE RESPONDENT WERE PARTIES TO A COLLECTIVE AGREEMENT AT THE TIME THIS APPLICATION WAS MADE WHICH WAS EFFECTIVE FROM JULY 1ST, 1966 TO DECEMBER 31ST, 1968, AND THAT THIS COLLECTIVE AGREEMENT WAS THE LATEST COLLECTIVE AGREEMENT IN A LENGTHY BARGAINING RELATIONSHIP BETWEEN THE RESPONDENT AND THE OTTAWA PRINTING CRAFTS UNION.

3. THE APPLICANT CHALLENGED THE STATUS OF THE OTTAWA PRINTING CRAFTS UNION BUT CALLED NO EVIDENCE IN SUPPORT OF ITS CHALLENGE. IT WAS THE APPLICANT'S POSITION THAT SINCE THE OTTAWA PRINTING CRAFTS UNION HAD NEVER BEEN RECOGNIZED AS A TRADE UNION BY THIS BOARD, IT WAS THEREFORE INCUMBENT UPON THE OTTAWA PRINTING CRAFTS UNION TO ESTABLISH ITS STATUS AS A TRADE UNION IN ORDER TO BE ENTITLED TO APPEAR ON A BALLOT IN A REPRESENTATION VOTE CONDUCTED BY THE BOARD. THE APPLICANT FURTHER ARGUED THAT THE OTTAWA PRINTING CRAFTS UNION SHOULD BE DEEMED TO HAVE ABANDONED ANY RIGHTS THAT IT MIGHT HAVE SINCE IT DID NOT INTERVENE AND PARTICIPATE IN THESE PROCEEDINGS.

4. IT IS A LONG ESTABLISHED PRACTICE OF THE BOARD THAT WHERE A COLLECTIVE AGREEMENT HAS BEEN IN EXISTENCE FOR MORE THAN ONE YEAR THAT SUCH AGREEMENT IS DEEMED TO BE A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(C) OF THE LABOUR RELATIONS ACT UNLESS EVIDENCE IS ADDUCED WHICH ESTABLISHES

OTHERWISE. THE ONUS OF CALLING SUCH EVIDENCE RESTS UPON THE PARTY WHICH CHALLENGES THE STATUS OF THE UNION THAT IS A PARTY TO THE COLLECTIVE AGREEMENT OR CHALLENGES THE STATUS OF THE COLLECTIVE AGREEMENT ITSELF.

5. THE BOARD'S PRACTICE IN THIS REGARD IS CONSISTENT WITH THE PROVISIONS OF SECTION 45A OF THE LABOUR RELATIONS ACT WHICH SPECIFICALLY PROVIDE THAT IF A COLLECTIVE AGREEMENT IS CHALLENGED DURING THE FIRST YEAR OF THE PERIOD OF TIME THAT THE FIRST COLLECTIVE AGREEMENT IS IN OPERATION, THE ONUS OF ESTABLISHING THAT THE TRADE UNION WAS ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE AGREEMENT WAS ENTERED INTO RESTS UPON THE PARTIES TO THE AGREEMENT. IT THEREFORE FOLLOWS THAT SINCE THIS PROVISION IS RESTRICTED TO THE FIRST YEAR OF OPERATION OF THE FIRST COLLECTIVE AGREEMENT BETWEEN THE PARTIES, THE BOARD'S PRACTICE OF REQUIRING THE PERSON WHO CHALLENGES THE STATUS OF A COLLECTIVE AGREEMENT WHICH HAS BEEN IN EXISTENCE FOR MORE THAN ONE YEAR TO ESTABLISH THE FACTS IN SUPPORT OF ITS CHALLENGE IS CONSISTENT WITH THE PROVISIONS OF SECTION 45(1) AND THE RULES OF EVIDENCE.

6. IN ADDITION, IN THE INSTANT CASE, THE PRESIDENT OF THE OTTAWA PRINTING CRAFTS UNION WAS IN ATTENDANCE AT THE HEARING TO ASSIST COUNSEL FOR THE APPLICANT AND IT WOULD THEREFORE HAVE BEEN WITHIN THE APPLICANT'S POWER TO CALL THE PRESIDENT OF THE OTTAWA PRINTING CRAFTS UNION TO ESTABLISH ANY FACTS WHICH MIGHT PROVE THAT THE OTTAWA PRINTING CRAFTS UNION WAS NOT A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT. THIS THE APPLICANT FAILED TO DO. IT FURTHER APPEARED THAT THE OTTAWA PRINTING CRAFTS UNION HAD RECENTLY PROCESSED A GRIEVANCE THROUGH ARBITRATION, WHICH IS CERTAINLY A FUNCTION OF A TRADE UNION. IN THESE CIRCUMSTANCES, THE BOARD IS NOT PREPARED TO DEPART FROM ITS USUAL PRACTICE WHICH REQUIRES THAT A PERSON CHALLENGING THE STATUS OF A COLLECTIVE AGREEMENT AND THE STATUS OF A UNION THAT IS A PARTY THERETO TO ADDUCE EVIDENCE IN SUPPORT OF ITS CHALLENGE WHERE SUCH COLLECTIVE AGREEMENT HAS BEEN IN EXISTENCE FOR MORE THAN ONE YEAR.

7. THE APPLICANT ARGUED THAT IF THE BOARD WERE TO ALLOW THE OTTAWA PRINTING CRAFTS UNION TO PARTICIPATE IN A REPRESENTATION VOTE BY APPEARING ON THE BALLOT, IT WOULD THEREBY INDIRECTLY GRANT STATUS TO THE OTTAWA PRINTING CRAFTS UNION AND IT WOULD RECOGNIZE THAT UNION AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT. THIS, HOWEVER, DOES NOT NECESSARILY FOLLOW. THE FACT THAT THE BOARD DEEMS THE OTTAWA PRINTING CRAFTS UNION TO BE A TRADE UNION FOR THE PURPOSE OF THIS APPLICATION IN THE ABSENCE OF EVIDENCE TO THE CONTRARY, THIS IS ONLY A REBUTTABLE INFERENCE. IF IN A

REPRESENTATION VOTE BETWEEN THE APPLICANT AND THE OTTAWA PRINTING CRAFTS UNION THE APPLICATION IS SUBSEQUENTLY DISMISSED, NO REMEDY IS SOUGHT BY OR GRANTED TO THE OTTAWA PRINTING CRAFTS UNION AND NO CERTIFICATE IS ISSUED TO THAT UNION AS A RESULT OF SUCH REPRESENTATION VOTE IN THESE CIRCUMSTANCES. THE FACT THAT A VOTE IS CONDUCTED BETWEEN THE APPLICANT AND THE OTTAWA PRINTING CRAFTS UNION DOES NOT CREATE IN THE OTTAWA PRINTING CRAFTS UNION STATUS WHICH IT DOES NOT OTHERWISE HAVE. WHILE THE BOARD DRAWS THE INFERENCE THAT THE OTTAWA PRINTING CRAFTS UNION IS A TRADE UNION FOR THE PURPOSE OF THIS APPLICATION, IN LIGHT OF THE COLLECTIVE BARGAINING RELATIONSHIP WHICH HAS BEEN SUBSISTING BETWEEN THE RESPONDENT AND THE OTTAWA PRINTING CRAFTS UNION AND IN THE ABSENCE OF EVIDENCE TO THE CONTRARY, SUCH INFERENCE MAY BE REBUTTED AT ANY FUTURE TIME. AGAIN, IF THE OTTAWA PRINTING CRAFTS UNION SEEKS CERTIFICATION FOR EMPLOYEES AT ANOTHER PLANT IT WILL AT THAT TIME HAVE TO ESTABLISH THAT IT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT SINCE IT WOULD THEN BE SEEKING A REMEDY UNDER THE ACT. WHILE THE FACT OF ITS BARGAINING RELATIONSHIP WITH THE RESPONDENT IN THIS CASE WOULD BE EVIDENCE TO ESTABLISH THE FACT THAT IT WAS A TRADE UNION, SUCH EVIDENCE WOULD NOT NECESSARILY BE CONCLUSIVE EVIDENCE OF ITS STATUS AS A TRADE UNION THAT IS ELIGIBLE FOR CERTIFICATION UNDER THE PROVISIONS OF THE LABOUR RELATIONS ACT. IF EVIDENCE CAN BE CALLED TO ESTABLISH THAT THE OTTAWA PRINTING CRAFTS UNION WAS A TRADE UNION THAT ENJOYED SUPPORT OF AN EMPLOYER IN ITS FORMATION OR ADMINISTRATION OR IS A TRADE UNION THAT HAS RECEIVED FINANCIAL OR OTHER SUPPORT FROM AN EMPLOYER, SECTION 10 OF THE LABOUR RELATIONS ACT WOULD PRECLUDE THE BOARD FROM CERTIFYING SUCH TRADE UNION.

8. SINCE THE OTTAWA PRINTING CRAFTS UNION WAS A PARTY TO A CURRENT COLLECTIVE AGREEMENT AT THE TIME THE APPLICATION WAS MADE, AND IN THE ABSENCE OF EVIDENCE TO THE CONTRARY, THE BOARD IS NOT PREPARED TO FIND THAT THE OTTAWA PRINTING CRAFTS UNION HAS ABANDONED ANY BARGAINING RIGHTS WHICH IT ENJOYED UNDER SUCH COLLECTIVE AGREEMENT. AGAIN, FOR THE REASONS SET OUT ABOVE, THE BOARD IS NOT PREPARED TO FIND IN THE ABSENCE OF EVIDENCE THAT THE OTTAWA PRINTING CRAFTS UNION IS NOT A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT AND MUST THEREFORE DRAW THE REBUTTABLE INFERENCE THAT IT DOES ENJOY THE STATUS FOR THE PURPOSE OF THIS APPLICATION.

9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY HEREINAFTER DESCRIBED, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON DECEMBER 9TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

10. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE FOLLOWING VOTING CONSTITUENCY:

ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN COMPOSING ROOM WORK AT OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENOR.

11. FOR THE PURPOSES OF CLARITY AND FOR THE REASONS SET OUT IN THE BOARD'S DECISION OF JANUARY 7TH, 1969, IN THIS MATTER, THE BOARD DECLARES THAT PERSONS CLASSIFIED AS PROOFREADERS AND TELETYPESETTER PERFORATOR OPERATORS ARE NOT INCLUDED IN THE VOTING CONSTITUENCY.

12. ALL EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

13. THE BOARD DIRECTS THAT J. G. JOHNSTON, J. L. MAGEE, B. BOURRET, R. GORLEY AND C. J. MCGAHEY BE PERMITTED TO VOTE AND THAT THEIR BALLOTS BE SEGREGATED AND NOT COUNTED PENDING A FURTHER DIRECTION BY THE BOARD.

14. MR. J. E. LEONARD, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF J. G. JOHNSTON, J. L. MAGEE, B. BOURRET, R. GORLEY AND C. J. MCGAHEY.

15. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT AND OTTAWA PRINTING CRAFTS UNION.

16. THE BOARD FURTHER DIRECTS THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE REPRESENTATION VOTE SHALL BE SEALED AND THAT THE BALLOTS SHALL NOT BE COUNTED PENDING A FURTHER DIRECTION BY THE BOARD.

17. THE MATTER IS REFERRED TO THE REGISTRAR.

15441-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE CORPORATION OF THE COUNTY OF HALTON (RESPONDENT) v. GROUP OF EMPLOYEES.

BEFORE: O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND R. W. TEAGLE.

DECISION OF THE BOARD: MARCH 17, 1969.

1. NO STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS HAS BEEN FILED WITH THE BOARD WITHIN THE TIME FIXED UNDER SUBSECTION 3 OF SECTION 42 OF THE BOARD'S RULES OF PROCEDURE FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER, DATED FEBRUARY 7TH, 1969, IN THIS MATTER.
2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.
3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT CHIEF PUBLIC HEALTH INSPECTOR, PERSONS ABOVE THE RANK OF CHIEF PUBLIC HEALTH INSPECTOR AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND ALL GRADUATE AND REGISTERED NURSES EMPLOYED BY THE RESPONDENT, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
4. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FINDS THAT MRS. K. THOMPSON, SECRETARY TO THE MEDICAL OFFICER OF HEALTH, IS NOT INCLUDED IN THE BARGAINING UNIT.
5. THE EXAMINER HAS INQUIRED INTO THE DUTIES AND RESPONSIBILITIES OF SENIOR PUBLIC HEALTH INSPECTORS. THE EVIDENCE INDICATES THAT THE PERSONS COMPLETE AN EMPLOYEE PERFORMANCE REVIEW FORM WHICH AMOUNTS TO A GENERAL APPRAISAL OF THE EMPLOYEES. THESE PERFORMANCE REVIEWS ARE THEN FORWARDED TO THE CHIEF PUBLIC HEALTH INSPECTOR. IT CAN BE INFERRRED FROM THE EVIDENCE THAT SALARY INCREASES ARE BASED ON THE PERFORMANCE OF THE EMPLOYEE AS CONFIRMED BY THE DEPARTMENT HEAD WHO IS THE MEDICAL OFFICER OF HEALTH. THERE IS NO EVIDENCE HOWEVER, AS TO THE EFFECT OF THE PERFORMANCE REVIEWS ON THE ULTIMATE DELIBERATIONS AFFECTING SALARIES. THE FUNCTIONS OF THE SENIOR PUBLIC HEALTH INSPECTORS WITH RESPECT TO THESE FORMS CEASE AS SOON AS THEY ARE FORWARDED TO THE CHIEF HEALTH INSPECTOR. THE FUNCTIONS PERFORMED IN THIS REGARD WOULD PARALLEL A LEAD HAND OR SENIOR EMPLOYEE ADVISING THE SUPERVISORY STAFF AS TO THE NATURE OF THE WORK PERFORMED BY THE MEN WITH WHOM THEY ARE WORKING.
6. IN ADDITION THESE EMPLOYEES DO NOT EXERCISE ANY OTHER FUNCTIONS NORMALLY ASSOCIATED WITH MANAGEMENT. THE WORK PERFORMED BY THESE EMPLOYEES IS THE SAME AS THE OTHER PUBLIC HEALTH INSPECTORS ALTHOUGH THEY DO SPEND A SHORT PERIOD OF TIME EACH DAY ASSIGNING WORK. ACCORDINGLY, HAVING REGARD TO ALL THE EVIDENCE WE FIND THAT THE SENIOR PUBLIC HEALTH INSPECTORS NAMELY, K. POLLITT, G. SULLIVAN, D. LAWSON DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE INCLUDED IN THE BARGAINING UNIT.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON DECEMBER 18TH, 1958, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

15521-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v.
ELLIOTT RUBBER & PLASTIC LTD. (RESPONDENT) v. GROUP OF
EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS
A. MAIN AND F.W. MURRAY.

APPEARANCES AT THE HEARING: D.M. STOREY AND A.J. LAVOIE FOR
THE APPLICANT; ROBERT B. STATTON FOR THE RESPONDENT; RICHARD
J. HUNEAULT FOR THE OBJECTORS.

DECISION OF THE BOARD: MARCH 4, 1969.

...
2. THE TERMINAL DATE FOR THIS APPLICATION FOR CERTIFICATION
WAS JANUARY 15, 1969. A STATEMENT OF DESIRE OR PETITION OPPOSING
THE APPLICANT TRADE UNION DATED JANUARY 13, 1969 WAS MAILED TO THE
BOARD BY REGISTERED MAIL ON THAT DATE AND WAS RECEIVED IN TORONTO
ON JANUARY 15, 1969. THE PETITION OMITTED ANY REFERENCE TO EITHER
THE NAME OF THE EMPLOYER OR TO A FILE NUMBER.

3. IN ACCORDANCE WITH THE BOARD'S USUAL PRACTICE, THE
REGISTRAR ADVISED THE APPARENT REPRESENTATIVE OF THE PETITIONERS
BY TELEGRAM DATED JANUARY 15, 1969 THAT HE WOULD BE UNABLE TO TAKE
ANY ACTION WITH RESPECT TO THE PETITION UNLESS ADVISED IN WRITING
ON OR BEFORE FRIDAY, JANUARY 17TH OF THE NAME OF THE EMPLOYER.
THE REGISTRAR INDICATED THAT IF THE PETITIONERS MADE NO REPLY BY
THAT DATE, THE PETITION WOULD BE RETURNED.

4. ON JANUARY 16, 1969, THE BOARD RECEIVED A TELEGRAM IN-
FORMING IT OF THE EMPLOYER'S NAME. ON JANUARY 17, 1969, THE
REGISTRAR NOTIFIED THE APPLICANT TRADE UNION AND THE SOLICITORS
FOR THE RESPONDENT COMPANY OF THE SUBSTANCE OF EVENTS OUTLINED
ABOVE.

5. AT THE HEARING, THE APPLICANT TOOK THE POSITION THAT
SECTION 48 OF THE BOARD'S RULES OF PROCEDURE HAD BEEN VIOLATED
WITH RESPECT TO THE PETITION AND THAT THE OMISSION OF THE NAME OF

THE EMPLOYER FROM THE PETITION WAS A SUBSTANTIAL ERROR THAT CANNOT BE CURED BY THE PROVISIONS OF SECTION 59 OF THE BOARD'S RULES OF PROCEDURE. SECTION 48 READS AS FOLLOWS:

"(1) EVIDENCE OF MEMBERSHIP IN A TRADE UNION OR OF OBJECTION BY EMPLOYEES TO CERTIFICATION OF A TRADE UNION OR OF SIGNIFICATION BY EMPLOYEES THAT THEY NO LONGER WISH TO BE REPRESENTED BY A TRADE UNION SHALL NOT BE ACCEPTED BY THE BOARD ON AN APPLICATION FOR CERTIFICATION OR FOR A DECLARATION TERMINATING BARGAINING RIGHTS UNLESS THE EVIDENCE IS IN WRITING, SIGNED BY THE EMPLOYEE OR EACH MEMBER OF A GROUP OF EMPLOYEES, AS THE CASE MAY BE, AND,

(a) IS ACCCOMPANIED BY,

(i) THE RETURN MAILING ADDRESS OF THE PERSON WHO FILES THE EVIDENCE, OBJECTION OR SIGNIFICATION, AND

(ii) THE NAME OF THE EMPLOYER; AND

(b) IS FILED NOT LATER THAN THE TERMINAL DATE FOR THE APPLICATION."

SECTION 59 STATES:

"NO PROCEEDING UNDER THESE RULES IS INVALID BY REASON OF ANY DEFECT IN FORM OR OF ANY TECHNICAL IRREGULARITY."

6. THE PETITION, AS NOTED, WAS FILED WITHIN THE TIME PRESCRIBED AND WAS DEFECTIVE ONLY IN THAT THE NAME OF THE EMPLOYER HAD BEEN OMITTED. THIS IS CLEARLY NOT A REQUIREMENT GOING TO THE SUBSTANCE OF THE MATTER. IT IS AN ADMINISTRATIVE NECESSITY HAVING NOTHING TO DO WITH THE MERITS AND IS DESIGNED TO ENABLE THE REGISTRAR TO CAUSE, IN THIS CASE, THE PETITION TO BE FILED WITH THE CORRECT APPLICATION. THE TIME SET FOR THE RETURN OF THE INFORMATION BY THE REGISTRAR HEREIN, UNDER AUTHORITY FROM THE BOARD, IS NOT AN EXTENSION OF THE TERMINAL DATE, WITH WHICH THE PETITIONERS HAD COMPLIED, BUT SIMPLY A LIMITED OPPORTUNITY AFFORDED THE PETITIONERS TO PROPERLY IDENTIFY FOR THE BOARD THE CASE TO WHICH THEY INTENDED THE DOCUMENT IN QUESTION TO APPLY. THE PROCEDURE ADOPTED BY THE BOARD IN THIS INSTANCE IS AMPLY PROVIDED FOR IN THE PROVISIONS OF SECTIONS 57(2) AND 58 OF THE BOARD'S RULES OF PROCEDURE, THEY READ, RESPECTIVELY, AS FOLLOWS:

"57. (2) THE BOARD MAY, UPON SUCH TERMS AS IT THINKS ADVISABLE, ENLARGE THE TIME PRESCRIBED BY THESE RULES FOR DOING ANY ACT, SERVING ANY NOTICE, FILING ANY REPORT, DOCUMENT OR PAPER OR TAKING ANY PROCEEDING AND MAY DO SO ALTHOUGH APPLICATION THEREFOR IS NOT MADE UNTIL AFTER THE EXPIRATION OF THE TIME PRESCRIBED.

58. AN APPLICATION, REPLY, INTERVENTION, COMPLAINT, STATEMENT OF DESIRE TO MAKE REPRESENTATIONS OR NOTICE MAY BE AMENDED BEFORE OR AT THE HEARING BY LEAVE OF THE BOARD UPON SUCH TERMS AND CONDITIONS AS THE BOARD THINKS ADVISABLE."

7. FOR THE FOREGOING REASONS, THE BOARD DENIES THE REQUEST OF THE APPLICANT THAT IT REJECT THE PETITION ON THE GROUNDS SET OUT ABOVE.

8. THE BOARD INQUIRED INTO THE ORIGINATION AND CIRCULATION OF THE PETITION AND THE MANNER IN WHICH THE SIGNATURES THERETO HAD BEEN OBTAINED. ON THE BASIS OF ALL THE EVIDENCE AND THE SUBMISSIONS OF THE PARTIES, THE BOARD FINDS THAT THE PETITION SUFFICIENTLY WEAKENS THE EVIDENCE OF MEMBERSHIP SO AS TO REQUIRE THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

* * *

10. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ELLIOT LAKE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

11. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JANUARY 15, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

12. A REPRESENTATION VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

13. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

14. THE MATTER IS REFERRED TO THE REGISTRAR.

15529-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V.
DUFFERIN COUNTY BOARD OF EDUCATION (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
R.W. TEAGLE AND E. BOYER.

DECISION OF THE BOARD: MARCH 11, 1969.

• • •

3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES, AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE BOARD HAD ORDERED THAT AN EXAMINER INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF THE CHIEF CUSTODIANS.

5. HAVING REGARD TO THE EXAMINER'S REPORT WITH RESPECT TO FREDERICK JOHN HODDINOTT, WHO IS THE CHIEF CUSTODIAN AT THE CENTRE DUFFERIN DISTRICT HIGH SCHOOL, THE BOARD FINDS THAT MR. HODDINOTT EXERCISES GENERAL CARETAKING DUTIES WHICH CONSIST OF SHOVELLING SNOW AND CUTTING GRASS. ALTHOUGH HE MAY SPEND SHORT PERIODS OF TIME IN ASSIGNING WORK HE EXERCISES NO OTHER DUTIES WHICH ARE USUAL TO PERSONS EXERCISING MANAGERIAL FUNCTIONS. THE MERE ASSIGNING OF WORK IN THIS CASE DOES NOT QUALIFY MR. HODDINOTT AS A PERSON EXERCISING MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND HE IS THEREFORE INCLUDED IN THE BARGAINING UNIT.

6. MR. GARNETT RAWN IS EMPLOYED AT ORANGEVILLE DISTRICT SECONDARY SCHOOL. ALTHOUGH HE IS ALSO CLASSIFIED AS A CHIEF CUSTODIAN HE SPENDS 75 PER CENT OF HIS TIME IN SUPERVISING SIX JANITORS. HE RECOMMENDS HIRING AND FIRING, WAGE INCREASES, CONTROLS TIME OFF AND ORDERS MATERIAL. HE HAS ON OCCASION PARTICIPATED IN DECISIONS AS TO WHETHER OR NOT CERTAIN PERSONS SHOULD BE HIRED. HAVING REGARD TO THE DUTIES OF MR. RAWN WE FIND THAT HE DOES EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS THEREFORE NOT INCLUDED IN THE BARGAINING UNIT.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JANUARY 16TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

15547-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. BABCOCK & WILCOX CANADA LTD. (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS P.J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: D.M. STOREY AND J. JARDINE FOR THE APPLICANT; F.G. HAMILTON, D.T. STEVENSON AND J.R. ASHTON FOR THE RESPONDENT.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN FOR THE MAJORITY AND DISSENTING DECISIONS OF BOARD MEMBERS P.J. O'KEEFFE AND J.E.C. ROBINSON. MARCH 10, 1969.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE APPLICANT SEEKS TO REPRESENT EMPLOYEES OF THE RESPONDENT IN A BARGAINING UNIT DESCRIBED AS FOLLOWS: "ALL TIMEKEEPERS OF THE RESPONDENT COMPANY IN GALT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND EMPLOYEES COVERED BY THE SUBSISTING COLLECTIVE AGREEMENTS". THE APPLICANT CLAIMS THAT THESE EMPLOYEES CONSTITUTE A "TAG END" TO THE PRODUCTION UNIT IT REPRESENTS.

2. THERE IS A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT IN WHICH THE RESPONDENT RECOGNIZES THE APPLICANT AS THE EXCLUSIVE COLLECTIVE BARGAINING AGENT FOR ALL EMPLOYEES OF THE COMPANY AT ITS GALT, ONTARIO PLANTS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMEN, OFFICE EMPLOYEES, TECHNICAL PERSONNEL, TEMPORARY ENGINEERING STUDENTS, SALES STAFF AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS. THIS AGREEMENT COVERS EMPLOYEES WHO ARE CLASSIFIED AS TIMEKEEPERS, ALTHOUGH THEY ARE, ALLEGEDLY, OF A DIFFERENT CATEGORY THAN THOSE REFERRED TO IN THE APPLICATION. IT IS AGREED, HOWEVER, THAT THE TIMEKEEPERS WHO ARE THE SUBJECTS OF THIS APPLICATION ARE NOT COVERED BY THE TERMS OF THE COLLECTIVE AGREEMENT ALTHOUGH THE PARTIES ARE NOT IN AGREEMENT AS TO THE REASON FOR THE EXCLUSION. THERE ARE ALSO AGREEMENTS WITH THE DRAFTSMEN'S ASSOCIATION OF ONTARIO LOCAL 164 AND WITH INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS.

3. THE RESPONDENT OPPOSES THE APPLICATION ON THE GROUND THAT THE BARGAINING UNIT PROPOSED BY THE APPLICANT IS INAPPROPRIATE FOR COLLECTIVE BARGAINING, AND ON THE FURTHER GROUNDS THAT THE PERSONS CONCERNED PROPERLY BELONG WITH THE OFFICE AND TECHNICAL GROUP OF EMPLOYEES.

4. IN SUPPORT OF THE LATTER CONTENTION, THE RESPONDENT REFERRED TO AN APPLICATION FOR CERTIFICATION OF AN OFFICE AND TECHNICAL UNIT PREVIOUSLY SOUGHT BY THE APPLICANT (BOARD FILE NO. 13402-67-R). IT WAS AGREED THAT THE EMPLOYEES CONCERNED IN THE PRESENT APPLICATION WERE AMONG THOSE COMPRISING THE LISTS OF OFFICE AND TECHNICAL EMPLOYEES DEALT WITH BY THE BOARD IN THE PRIOR APPLICATION. THE UNION DID NOT CHALLENGE THE INCLUSION OF THOSE TIMEKEEPERS IN THE OFFICE AND TECHNICAL UNIT THEN SOUGHT, ALTHOUGH THERE WAS AN EXAMINER APPOINTED TO INQUIRE, INTER ALIA, INTO THE LISTS. THE RESPONDENT SUBMITS THAT HAVING ACQUIESCED IN THE INCLUSION OF THE TIMEKEEPERS IN THE OFFICE AND TECHNICAL GROUP, THE APPLICANT IS NOW ESTOPPED FROM CLAIMING THEM AS A TAG END TO THE PRODUCTION UNIT. IN ADDITION, IT IS SAID THAT THE BOARD IN ITS DECISION IN THE FORMER APPLICATION PROCEEDED ON THE BASIS THAT THESE PERSONS BELONGED IN THE OFFICE AND TECHNICAL UNIT SOUGHT IN THAT CASE AND THAT THIS AMOUNTS TO A FINDING ON THE PART OF THE BOARD THAT THOSE EMPLOYEES WERE PROPERLY WITHIN THE OFFICE AND TECHNICAL UNIT.

5. IN VIEW OF THE FACT THAT THE DECISION OF THE BOARD IN THE PREVIOUS APPLICATION MAKES NO SPECIFIC REFERENCE TO THE PERSONS HERE INVOLVED AND SINCE IT IS AGREED THAT NO QUESTION WITH RESPECT TO THEM CAME DIRECTLY BEFORE THAT BOARD, WE ARE LOATH TO CONSIDER THE DECISION IN THAT CASE, STANDING ALONE, AS DETERMINATIVE OF THE ISSUE RAISED IN THE PRESENT PROCEEDINGS, PARTICULARLY SINCE THE BOARD DID NOT DETERMINE A BARGAINING UNIT IN THE PRIOR CASE.

6. IN OUR OPINION, THE MATTER MAY BE DISPOSED OF BY REFERENCE TO THE TERMS OF THE COLLECTIVE AGREEMENT. AS HAS BEEN OBSERVED, THE UNION IS RECOGNIZED AS THE BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT WITH THE EXCEPTIONS NOTED ABOVE. IF THE EMPLOYEES CONCERNED ARE OFFICE EMPLOYEES OR TECHNICAL PERSONNEL AS THOSE TERMS ARE UNDERSTOOD IN THE COLLECTIVE AGREEMENT, THEY ARE EXCLUDED BY THE PARTIES FROM THE COVERAGE OF THE COLLECTIVE AGREEMENT. THIS WOULD NOT NECESSARILY MEAN THAT THE BOARD, IN APPLYING ITS CRITERIA, MIGHT NOT FIND THEM TO BE A TAG END TO THE PRODUCTION UNIT AND THUS APPROPRIATE FOR CERTIFICATION. HOWEVER, IF THEY DO NOT FALL WITHIN THE CATEGORY OF OFFICE EMPLOYEES OR TECHNICAL EMPLOYEES, AS THOSE CATEGORIES ARE USED IN THE COLLECTIVE AGREEMENT, THEN THEY ARE CAUGHT BY THE "ALL EMPLOYEE" DESCRIPTION OF THE BARGAINING UNIT SET OUT IN THE COLLECTIVE AGREEMENT AND THUS WOULD NOT BE PROPERLY THE SUBJECT OF AN APPLICATION FOR CERTIFICATION. IT NEED HARDLY BE ADDED THAT PERSONS EXEMPTED FROM OTHER AGREEMENTS WHO ARE NON-MANAGERIAL MUST FALL INTO THE "ALL EMPLOYEE" GROUP.

7. IN OUR OPINION, THEREFORE, THERE IS A QUESTION TO BE ANSWERED WITH RESPECT TO THE STATUS OF THE GROUP OF TIMEKEEPERS INVOLVED IN THIS APPLICATION UNDER THE TERMS OF THE COLLECTIVE AGREEMENT. THIS IS A DETERMINATION TO BE MADE UNDER THE PROVISIONS OF THAT AGREEMENT BY AN ARBITRATOR OR BOARD OF ARBITRATION AS THE AGREEMENT MAY PROVIDE, AND NOT BY THIS BOARD.

8. THE APPLICATION IS ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER J.E.C. ROBINSON: MARCH 10, 1969.

THE APPLICANT HAS MADE APPLICATION FOR THE EMPLOYEES IN A BARGAINING UNIT SUGGESTED AS FOLLOWS: "ALL TIMEKEEPERS OF THE RESPONDENT COMPANY IN GALT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND EMPLOYEES COVERED BY THE SUBSISTING COLLECTIVE AGREEMENTS."

WHILE I AM IN AGREEMENT THAT THIS APPLICATION SHOULD BE DISMISSED, I CAME TO THIS CONCLUSION ON THE BASIS OF DIFFERENT REASONING THAN THAT OF THE VICE-CHAIRMAN.

THERE IS A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT COVERING ALL EMPLOYEES OF THE COMPANY AT ITS GALT, ONTARIO PLANTS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMEN, OFFICE EMPLOYEES, TECHNICAL PERSONNEL, TEMPORARY ENGINEERING STUDENTS, SALES STAFF AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS.

THE RESPONDENT MADE REPRESENTATIONS THAT APPROXIMATELY SIX MONTHS PRIOR TO THE INSTANT APPLICATION, THIS UNION MADE AN APPLICATION FOR CERTIFICATION OF THE OFFICE, CLERICAL AND TECHNICAL GROUP OF THE RESPONDENT. INCLUDED WITHIN THIS GROUP WERE THE VERY EMPLOYEES NOW SOUGHT BY THE UNION TO BE INCLUDED WITH THE PLANT GROUP. THESE PERSONS WERE INCLUDED IN THE LISTS OF PERSONS COMPRISING THE OFFICE, CLERICAL AND TECHNICAL GROUP, WHICH FACT WAS ADMITTED BY THE APPLICANT IN THE INSTANT APPLICATION.

IT IS COMMON GROUND THAT THIS FORMER APPLICATION WAS DISMISSED BECAUSE THE APPLICANT HAD INSUFFICIENT MEMBERSHIP IN THE PROPOSED BARGAINING UNIT.

THE BOARD HAVING DISMISSED THIS FORMER APPLICATION, IT IS TRITE TO SAY THAT THE BOARD TOOK INTO CONSIDERATION THE FACT THAT THESE TIMEKEEPERS FORMED PART OF THE UNIT NUMBER DERIVED BY THE BOARD FOR THE PURPOSES OF THE COUNT, AND THE SUBSEQUENT DISMISSAL OF THE FORMER APPLICATION.

THAT BEING SO, I AM OF THE OPINION, AND I WOULD SO FIND, THAT THE APPLICANT IS NOW PRECLUDED FROM REMOVING THIS CLASSIFICATION FROM THE OFFICE, CLERICAL AND TECHNICAL GROUP, AND SUBMITTING IT WITH THE PLANT UNIT.

ACCORDINGLY, I WOULD DISMISS THE APPLICATION.

DECISION OF BOARD MEMBER P.J. O'KEEFFE: MARCH 10, 1969.

SINCE THIS APPLICATION IS A COMPLEX MATTER INVOLVING A DISPUTE BETWEEN THE PARTIES AS TO THE APPROPRIATENESS OF THE PROPOSED BARGAINING UNIT I FIND IT IMPOSSIBLE TO MAKE AND INFORMED DETERMINATION WITHOUT HAVING FURTHER INFORMATION WITH REGARD TO THE RELATIONSHIP OF THE EMPLOYEES INVOLVED IN THE INSTANT APPLICATION WITH THE OTHER THREE GROUPS OF EMPLOYEES OF THE RESPONDENT.

SHOULD THE EMPLOYEES INVOLVED IN THIS APPLICATION BE CONSIDERED A TAG END UNIT TO THE PLANT EMPLOYEES? DO THEY HAVE A COMMUNITY OF INTEREST WITH THE EMPLOYEES COVERED UNDER SUBSISTING COLLECTIVE AGREEMENTS? DO THEY PROPERLY FALL INTO A CLERICAL-TECHNICAL UNIT?

THE ANSWERS TO THE FOREGOING QUESTIONS CAN ONLY BE DETERMINED BY MAKING FURTHER INQUIRIES INTO THIS MATTER.

I WOULD HAVE APPOINTED AN EXAMINER TO INQUIRE INTO AND REPORT TO THE BOARD ON THE APPROPRIATENESS OF THE APPLICANT'S PROPOSED BARGAINING UNIT, SEIZED WITH THIS REPORT AND ALLOWING THE PARTIES TO MAKE FURTHER REPRESENTATIONS IF REQUIRED. I WOULD THEN BE IN A POSITION TO RENDER AN INFORMED DECISION ON THE MERITS OF THIS APPLICATION.

15573-68-R: OTTAWA TYPOGRAPHICAL UNION No. 102 (APPLICANT) v. THE OTTAWA CITIZEN, A DIVISION OF SOUTHAM PRESS LIMITED (RESPONDENT) v. THE OTTAWA NEWSPAPER GUILD, LOCAL 205 (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS A. MAIN AND F. W. MURRAY.

APPEARANCES AT THE HEARING: IAN SCOTT, JAMES DUFFY AND TERRY KEARNEY FOR THE APPLICANT, C.A. MORLEY, E. LEIGH AND S. ROBERTS FOR THE RESPONDENT, DAVID W. SCOTT AND FREDERICK SEQUIN FOR THE INTERVENER AND OBJECTORS.

DECISION OF THE BOARD:

MARCH 18, 1969.

2. AT THE HEARING, AFTER THE APPLICANT'S FIRST WITNESS WAS HEARD, COUNSEL FOR THE APPLICANT REQUESTED THE BOARD TO ADJOURN THE HEARING IN ORDER TO PERMIT THE APPLICANT TO CALL ADDITIONAL EVIDENCE. THE BOARD IS OF OPINION THAT THE APPLICANT HAD FULL OPPORTUNITY TO HAVE ALL WITNESSES AVAILABLE WHICH IT REQUIRED TO ESTABLISH THE NECESSARY FACTS IN SUPPORT OF ITS APPLICATION. THE APPLICANT WAS NOT CAUGHT BY SURPRISE BY EVIDENCE ADDUCED BY ANY OF THE OTHER PARTIES, SINCE THE APPLICANT'S REQUEST WAS MADE PRIOR TO THE OTHER PARTIES CALLING EVIDENCE. IN THESE CIRCUMSTANCES, THE BOARD DOES NOT DEEM IT ADVISABLE TO GIVE THE APPLICANT AN ADDITIONAL OPPORTUNITY TO CALL FURTHER EVIDENCE SINCE THE APPLICANT HAD FULL OPPORTUNITY TO PROPERLY PREPARE ITSELF TO ESTABLISH ALL THE FACTS NECESSARY FOR ITS CASE AND THE APPLICANT'S REQUEST IS THEREFORE DENIED.

3. THE APPLICANT HAS APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR "ALL PROOFREADERS AND TELETYPE SETTERS IN THE EMPLOY OF THE RESPONDENT IN THE CITY OF OTTAWA."

4. THE RESPONDENT AND THE INTERVENER OPPOSED THIS APPLICATION ON THE GROUNDS THAT THE UNIT IS NOT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THE APPLICANT IN THIS CASE HAS BASED ITS CLAIM TO REPRESENT THE TWO CLASSIFICATIONS ON THE GROUNDS THAT THESE CLASSIFICATIONS ARE REGULARLY INCLUDED IN ITS USUAL CRAFT BARGAINING UNIT. THE EVIDENCE ESTABLISHED THAT THE INTERVENER HAS ACTIVELY REPRESENTED THE TWO CLASSIFICATIONS SINCE 1953. THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER CONTAINS SPECIAL PROVISIONS INCLUDING SEPARATE WAGE RATES, WORKING CONDITIONS AND SENIORITY PROVISIONS FOR BOTH PROOFREADERS AND TELETYPESETTERS. A PROOFREADER IS CURRENTLY PRESIDENT OF THE INTERVENER. GRIEVANCES HAVE BEEN PROCESSED ON BEHALF OF THE PROOFREADERS BY THE INTERVENER. THERE WAS NO EVIDENCE THAT EITHER THE PROOFREADERS OR TELETYPESETTERS ENJOYED A LESSER EQUALITY OF REPRESENTATION FROM THE INTERVENER THAN WAS ENJOYED BY OTHER EMPLOYEES COVERED BY THE COLLECTIVE AGREEMENT. WHILE THERE APPEARED TO BE A CERTAIN AMOUNT OF DISCONTENT AMONG THE TWO CLASSIFICATIONS WITH RESPECT TO THE RATES OF WAGES PAID TO THEM, THERE WAS NO EVIDENCE THAT THEIR WAGE RATES WERE DELIBERATELY HELD DOWN BY THE INTERVENER IN ORDER TO PROMOTE OTHER CLASSIFICATIONS WITHIN THE BARGAINING UNIT. IT IS NOT FOR THIS BOARD TO DETERMINE WHETHER ONE UNION IS MORE CAPABLE OF REPRESENTING EMPLOYEES THAN ANOTHER UNION. WHAT THIS BOARD IS CONCERNED WITH IN AN APPLICATION UNDER SECTION 6(2) OF THE LABOUR RELATIONS ACT IS WHETHER THERE HAS BEEN EQUALITY OF REPRESENTATION OF EMPLOYEES BY THE INCUMBENT TRADE UNION.

6. IF NO OTHER FACTORS INTERVENED AND NONE OF THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED WERE REPRESENTED BY A TRADE UNION, THE APPLICANT WOULD BE ENTITLED TO BE CERTIFIED FOR ITS USUAL CRAFT UNIT WHICH WOULD BE DEEMED TO BE APPROPRIATE UNDER SECTION 6(2) OF THE ACT. HOWEVER, WHERE THAT CRAFT BARGAINING UNIT (OR A PART THEREOF AS IN THE INSTANT CASE) IS CURRENTLY INCLUDED IN A BARGAINING UNIT REPRESENTED BY ANOTHER TRADE UNION, THE BOARD IS NOT REQUIRED TO APPLY SECTION 6(2) OF THE ACT. IN DETERMINING WHETHER THE BOARD SHOULD EXERCISE ITS DISCRETION IN THESE CIRCUMSTANCES IN FAVOUR OF THE APPLICANT, ALL THE FACTS OF THE CASE MUST BE TAKEN INTO CONSIDERATION.

7. HAVING REGARD TO THE DECISIONS OF THE BOARD IN THE LILY CUP CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1961, p. 370, THE CANADA FOUNDRIES AND FORGINGS CASE (1961) C.C.H. CANADIAN LABOUR LAW REPORTER ¶16,203, C.L.S. 76-753, THE AUTOMATIC ELECTRIC (CANADA) LIMITED CASE, BOARD FILE #1501-61-R, THE DOMINION FABRICS CASE, BOARD FILE #2331-61-R, THE DARLING & COMPANY OF CANADA, LIMITED CASE, O.L.R.B. MONTHLY REPORT, NOVEMBER 1961, p. 273, AND THE OTTAWA CITIZEN CASE, BOARD FILE #15412-68-R, DATED JANUARY 7TH, 1969, AND THE HISTORY OF COLLECTIVE BARGAINING BETWEEN THE RESPONDENT AND THE INTERVENER AS EVIDENCED BY THE CONTINUOUS REPRESENTATION BY THE INTERVENER OF THE PROOFREADERS AND TELETYPESETTERS SINCE 1953, THE SEPARATE WAGE SCHEDULES AND WORKING CONDITIONS ENJOYED BY THE PROOFREADERS AND TELETYPESETTERS UNDER THE COLLECTIVE AGREEMENT TOGETHER WITH THE SENIORITY RIGHTS ENJOYED BY THESE CLASSIFICATIONS AND THE OPPOSITION TO THE APPLICATION BY THE RESPONDENT, THE BOARD IS OF OPINION THAT IT SHOULD EXERCISE ITS DISCRETION UNDER SECTION 6(2) OF THE ACT AGAINST THE APPLICANT AND FIND THAT THE PROPOSED INCLUSION OF THE PROOFREADERS AND TELETYPESETTERS IN THE BARGAINING UNIT SOUGHT BY THE APPLICANT IS INAPPROPRIATE IN THE CIRCUMSTANCES OF THIS CASE AND THE BOARD IS THEREFORE NOT PREPARED TO SEVER THESE CLASSIFICATIONS FROM THE UNIT CURRENTLY REPRESENTED BY THE INTERVENER.

8. SINCE THE BOARD HAS FOUND THAT THE UNIT PROPOSED BY THE APPLICANT IN THIS CASE IS INAPPROPRIATE FOR COLLECTIVE BARGAINING, THIS APPLICATION IS THEREFORE DISMISSED.

9. THE RESPONDENT IN THIS MATTER OBJECTED TO THE APPLICANT ADDUCING EVIDENCE IN SUPPORT OF ITS APPLICATION ON THE GROUNDS THAT THIS APPLICATION WAS AN ATTEMPT TO CIRCUMVENT THE BOARD'S DECISION IN THE OTTAWA CITIZEN CASE DATED JANUARY 7TH, 1969 REFERRED TO ABOVE. IT WAS THE RESPONDENT'S POSITION THAT THE APPLICANT MAKE A NEW APPLICATION RATHER THAN REQUEST RECONSIDERATION OF THE JANUARY 7TH DECISION REFERRED TO ABOVE, SINCE THE EVIDENCE IT CALLED IN THIS CASE WAS AVAILABLE TO THE APPLICANT AT THE TIME OF THE HEARING OF THE EARLIER APPLICATION. IN VIEW OF THE RESULT, HOWEVER, IT IS UNNECESSARY FOR THE BOARD TO DEAL WITH THE RESPONDENT'S OBJECTIONS IN THIS REGARD.

15578-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:
CLC (APPLICANT) v. ZELLER'S LIMITED (RESPONDENT) v. GROUP OF EMPLOY-
EES) (OBJECTORS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
E. BOYER AND R.W. TEAGLE.

DECISION OF O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBER E. BOYER;
BOARD MEMBER R.W. TEAGLE DISSENTING IN PART: MARCH 18, 1969.

• • •

3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES IN PETERBOROUGH, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. IT WAS CONTENDED THAT CERTAIN EMPLOYEES EXERCISED MANAGERIAL FUNCTIONS AND AS A RESULT THE EXAMINER WAS APPOINTED TO INQUIRE INTO THEIR DUTIES AND RESPONSIBILITIES.

5. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT JAMES LACEY, STOCKROOM HEAD AND J. McCALLUM AND MRS. SHARPE ARE INCLUDED IN THE BARGAINING UNIT AND THAT M. SWEETING, E. TOWNSDEND AND P. ROSEBUSH ARE NOT INCLUDED IN THE BARGAINING UNIT.

6. HAVING REGARD TO THE PRINCIPLES ENUNCIATED IN THE SYDENHAM DISTRICT HOSPITAL CASE, 1967 MAY MONTHLY REPORT, O.L.R.B. 135, WE FIND THAT L. HUTCHINSON IS INCLUDED IN THE BARGAINING UNIT.

7. WE FIND THAT CLARK ARMSTRONG WHO IS A WINDOW DRESSER DOES NOT EXERCISE MANAGERIAL FUNCTIONS AND IS THEREFORE INCLUDED IN THE BARGAINING UNIT.

8. WE FIND THAT MARY ALLEN WHO IS REFERRED TO AS A SUPERVISOR IS A SENIOR EMPLOYEE WITH ADDITIONAL RESPONSIBILITIES IN MERCHANDISING BUT THAT SHE MAKES SALES TO INDIVIDUAL CUSTOMERS, WRAPS MERCHANDISE, AND CLEANS AND DUSTS THE SHELVES AS DO THE OTHER GIRLS IN THE DEPARTMENT. SHE DOES NOT EXERCISE DUTIES AND RESPONSIBILITIES THAT ARE NORMALLY CONSIDERED BY THIS BOARD TO BE MANAGERIAL AND ACCORDINGLY WE FIND THAT MARY ALLEN IS INCLUDED IN THE BARGAINING UNIT. HAVING REGARD TO THE AGREEMENT OF THE PARTIES THAT THE EVIDENCE GIVEN BY MARY ALLEN WOULD APPLY TO ISOBEL NORRIS, WE FIND THAT ISOBEL NORRIS DOES NOT EXERCISE MANAGERIAL FUNCTIONS AND IS THEREFORE INCLUDED IN THE BARGAINING UNIT.

9. ALFRED BELL WHO IS CLASSIFIED AS A MANAGEMENT TRAINEE SPENDS 50 PER CENT TO 75 PER CENT OF HIS TIME ON THE SALES FLOOR SELLING MERCHANDISE. HE AGREED THAT HIS DUTIES WERE SUBSTANTIALLY THE SAME AS MRS. NORRIS' AND MRS. ALLEN'S. HE HAS NO AUTHORITY OVER EMPLOYEES BUT WILL ASSIST THEM IN PLANNING THEIR WORK AND WILL OFFER CONSTRUCTIVE COMMENTS. HE EXERCISES NO OTHER MANAGERIAL FUNCTIONS. MR. BELL FURTHER TESTIFIED THAT THERE IS NO SPECIFIC LENGTH OF TIME SET DOWN FOR THE MANAGEMENT TRAINING PROGRAMME. IN THE ABSENCE OF ANY DEFINITIVE TRAINING PROGRAMME A MAJORITY OF THE BOARD FINDS THAT THE PRESENT DUTIES AND RESPONSIBILITIES OF MR. BELL ARE SUCH THAT HE CANNOT BE CLASSIFIED AS EXERCISING MANAGERIAL FUNCTIONS AND ACCORDINGLY HE IS INCLUDED IN THE BARGAINING UNIT. HAVING REGARD TO THE AGREEMENT OF THE PARTIES THAT THE EVIDENCE GIVEN BY ALFRED BELL WOULD APPLY TO RICHARD LAFRAMBOISE WE THEREFORE FIND THAT RICHARD LAFRAMBOISE DOES NOT EXERCISE MANAGERIAL FUNCTIONS AND IS THEREFORE INCLUDED IN THE BARGAINING UNIT.

10. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JANUARY 30TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

11. A REPRESENTATION VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

12. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

13. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER R.W. TEAGLE: MARCH 18, 1969.

ALTHOUGH I AGREE WITH THE DECISION OF THE MAJORITY WITH RESPECT TO ALL OTHER MATTERS CONTAINED IN THEIR DECISION, I DISSENT FROM THE MAJORITY FINDING WHEREBY THEY INCLUDE THE MANAGEMENT TRAINEES, ALFRED BELL AND RICHARD LAFRAMBOISE, IN THE BARGAINING UNIT. I WOULD NOT HAVE INCLUDED THOSE PERSONS IN THE BARGAINING UNIT.

15602-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA,
LOCAL 837 (APPLICANT) v. ALDERSHOT CONTRACTORS EQUIPMENT RENTAL
LIMITED (RESPONDENT).

BEFORE: G.W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: S. SIMPSON FOR THE APPLICANT
AND E.L. STRINGER FOR THE RESPONDENT.

DECISION OF THE BOARD: MARCH 27, 1969.

1. ON FEBRUARY 7, 1969 THE BOARD CERTIFIED THE APPLICANT AS THE BARGAINING AGENT FOR ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN BOARD AREA No. 26. FOLLOWING THE ISSUANCE OF THE CERTIFICATE THE RESPONDENT MADE CERTAIN ALLEGATIONS WITH RESPECT TO THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT AND, AFTER CONDUCTING ITS USUAL PRELIMINARY INVESTIGATIONS, THE BOARD PUT THE MATTER ON FOR HEARING. AT THE HEARING THE BOARD HEARD EVIDENCE RESPECTING THE MEMBERSHIP EVIDENCE AND SUBSEQUENTLY THE PARTIES MADE REPRESENTATIONS TO THE BOARD IN WRITING.

2. THE EVIDENCE PRESENTLY BEFORE THE BOARD ESTABLISHES THAT A CERTIFICATE OF MEMBERSHIP FILED BY THE APPLICANT WAS SIGNED IN BLANK BY THE EMPLOYEE CLAIMED BY THE APPLICANT AS A MEMBER. THE EVIDENCE ALSO ESTABLISHES THAT THE EMPLOYEE IN QUESTION, ONE A. DiTOMASSO, WAS NOT IN FACT A MEMBER OF THE APPLICANT ALTHOUGH THE APPLICANT DOES HAVE AS A MEMBER ONE J. DiTOMASSO. THE PERSON WHO PRESENTED THE MEMBERSHIP IN BLANK FOR SIGNATURE WAS A BUSINESS AGENT OF THE APPLICANT. THE BOARD WAS UNAWARE THAT THIS BUSINESS AGENT WAS INVOLVED IN THE CASE AND CONSEQUENTLY HE WAS NOT SUMMONSED AS A WITNESS. HOWEVER, THE PERSON WHO SIGNED THE FORM 54 AND WHO ALSO CERTIFIED THE CORRECTNESS OF THE STATEMENTS IN THE SAID CERTIFICATE OF MEMBERSHIP WAS SUBPOENAED AND HE TESTIFIED THAT THE CERTIFICATE WAS SUBMITTED UNDER THE IMPRESSION THAT IT WAS SIGNED BY J. DiTOMASSO. HE FURTHER TESTIFIED THAT WHEN HE SIGNED THE CERTIFICATE OF MEMBERSHIP THE OFFICE SECRETARY HAD A MEMBERSHIP BOOK IN HER HANDS FOR J. DiTOMASSO BUT THAT HE DID NOT TAKE A LOOK INSIDE THE BOOK. THIS WITNESS, THE FINANCIAL SECRETARY AND BUSINESS REPRESENTATIVE OF THE APPLICANT, ALSO TESTIFIED THAT ON OCCASION IT WAS THE PRACTICE OF THE LOCAL TO HAVE CERTIFICATES SIGNED IN BLANK.

3. THE APPLICANT HAS CONCEDED THAT IT WAS CARELESS WITH RESPECT TO THE CERTIFICATE OF MEMBERSHIP FILED FOR DiTOMASSO AND STATED THAT IT WOULD BE AGREEABLE TO HAVING THE CERTIFICATE ISSUED TO IT ON FEBRUARY 7, 1969 RESCINDED. WE HAVE NO HESITATION

IN FINDING THAT, HAD THIS EVIDENCE BEEN BEFORE THE BOARD AT THE TIME IT WAS CONSIDERING ITS ORIGINAL DECISION, THE APPLICATION WOULD HAVE BEEN DISMISSED. REFERENCE IS MADE TO THE FRANK LICARI & SONS CASE, O.L.R.B. MONTHLY REPORT, APRIL 1967, PAGE 57.

4. ACCORDINGLY, THE DECISION OF THE BOARD DATED FEBRUARY 7, 1969 AND THE CERTIFICATE ISSUED TO THE APPLICANT ON THE SAME DATE ARE REVOKED. THE APPLICANT IS DIRECTED TO RETURN TO THE BOARD FORTHWITH THE CERTIFICATE IN QUESTION AND THE RESPONDENT IS DIRECTED TO RETURN ITS COPY OF THE SAID CERTIFICATE.

5. THE APPLICATION IS DISMISSED.

15618-68-R: FERRITRONICS EMPLOYEE ASSOCIATION (APPLICANT) v. FERRITRONICS LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: R.L. HENDRIE FOR THE APPLICANT, AND NO ONE FOR THE RESPONDENT.

DECISION OF THE BOARD: MARCH 10, 1969.

1. THIS IS THE FIRST TIME THE APPLICANT HAS APPLIED TO THE BOARD FOR CERTIFICATION. THAT BEING THE CASE, THE BOARD NOTIFIED THE APPLICANT THAT IT WOULD BE REQUIRED TO PRODUCE EVIDENCE TO ESTABLISH ITS STATUS AS A TRADE UNION WITHIN THE MEANING OF THE LABOUR RELATIONS ACT IN ORDER TO QUALIFY AS BARGAINING AGENT FOR THE EMPLOYEES CONCERNED.

2. THE APPLICANT FILED A DOCUMENT ENTITLED "FERRITRONICS EMPLOYEE ASSOCIATION CONSTITUTION" WHICH WAS ADOPTED BY A MEMBERSHIP MEETING IN OCTOBER OF 1968.

3. THE EVIDENCE WAS THAT A PRESIDENT, A VICE-PRESIDENT AND A SECRETARY-TREASURER WERE ELECTED BY THE EMPLOYEES OVER A YEAR AGO, THAT IS PRIOR TO THE ADOPTION OF THE CONSTITUTION. THE PURPOSE OF ELECTING THE OFFICERS AT THAT TIME WAS TO FORM A COMMITTEE TO ARRANGE FOR BRINGING INTO EXISTENCE AN ASSOCIATION THROUGH WHICH THE EMPLOYEES COULD BARGAIN COLLECTIVELY WITH THE RESPONDENT. IT WAS AS THE RESULT OF THE EFFORTS OF THIS COMMITTEE THAT THE CONSTITUTION WAS ADOPTED. THE CONSTITUTION WAS ADOPTED, AS INDICATED PREVIOUSLY, AT A MEETING OF THE EMPLOYEES HELD SOME TIME IN OCTOBER 1968. THE FINAL PAGE OF THE DOCUMENT BEARS 31 SIGNATURES OF EMPLOYEES.

IT WAS GIVEN IN EVIDENCE THAT THE PURPOSE OF SIGNING THE CONSTITUTION WAS TO INDICATE THAT THE EMPLOYEES UNDERSTOOD WHAT IT WAS ALL ABOUT. THERE WERE NO FORMAL MINUTES KEPT OF THIS MEETING. THE BOARD IS SATISFIED HOWEVER, THAT THE EMPLOYEES WHO ATTENDED THE OCTOBER 1968 MEETING ADOPTED THE CONSTITUTION.

4. CLAUSE 6 OF THE CONSTITUTION IS AS FOLLOWS:

"EXECUTIVE COMMITTEE"

THE AFFAIRS OF THE ASSOCIATION SHALL BE ADMINISTERED BY AN EXECUTIVE COMMITTEE TO CONSIST OF FOUR MEMBERS. IN THE YEAR 1968 FOUR MEMBERS SHALL BE ELECTED; THE TWO OBTAINING THE LARGEST VOTE TO SERVE FOR TWO YEARS AND THE REMAINING TWO TO SERVE FOR ONE YEAR COMMENCING IN THE YEAR 1969 AND THEREAFTER TWO NEW MEMBERS SHALL BE ELECTED EACH YEAR TO SERVE FOR TWO YEARS. ALL MEMBERS OF THE EXECUTIVE COMMITTEE SHALL BE ELECTED BY A MAJORITY VOTE AT THE ANNUAL GENERAL MEMBERSHIP MEETING OF THE ASSOCIATION."

5. CLAUSE 9 OF THE CONSTITUTION SAYS:

"OFFICERS"

THE OFFICERS OF THE ASSOCIATION SHALL CONSIST OF A PRESIDENT, VICE-PRESIDENT, SECRETARY AND TREASURER WHO SHALL BE APPOINTED BY THE EXECUTIVE COMMITTEE AS SOON AFTER THE ANNUAL GENERAL MEETING AS POSSIBLE. THE PRESIDENT, VICE-PRESIDENT AND SECRETARY SHALL BE MEMBERS OF THE EXECUTIVE COMMITTEE AND THE TREASURER MAY BE APPOINTED FROM AMONG THE MEMBERS OF THE EXECUTIVE COMMITTEE OR FROM THE GENERAL MEMBERSHIP AS THE EXECUTIVE COMMITTEE SHALL DECIDE."

6. THE EVIDENCE IS THAT UP TO THE DATE OF THE HEARING, THERE HAD BEEN NO ELECTION OF AN EXECUTIVE COMMITTEE AS PROVIDED FOR UNDER CLAUSE 6 OF THE CONSTITUTION SINCE ITS ADOPTION. FURTHERMORE, THERE HAD BEEN NO ATTEMPT MADE TO IMPLEMENT THE PROVISIONS OF CLAUSE 9 OF THE CONSTITUTION. NO ACTION HAS BEEN TAKEN BY THE MEMBERSHIP, SINCE THE ADOPTION OF THE CONSTITUTION, TO RATIFY THE OFFICERS ELECTED PRIOR TO THE ADOPTION OF THE CONSTITUTION AS OFFICERS OR TO WAIVE OR ACQUIESCE IN THE WAIVER OF THE CONSTITUTIONAL REQUIREMENTS FOR THE ELECTION OF OFFICERS.

7. THE BOARD FINDS THAT THE APPLICANT HAS NO OFFICERS ELECTED IN ACCORDANCE WITH ITS CONSTITUTION. IT HAS NOT ESTABLISHED THAT THE PERSONS PURPORTING TO ACT AS OFFICERS HAVE BEEN OTHERWISE AUTHORIZED TO ACT BY THE MEMBERSHIP. IN LIGHT OF THE FOREGOING AND FOLLOWING THE REASONS SET OUT BY THE BOARD IN HARRIS (J) & SONS LTD. 60 C.L. L.C. #16,177 THE BOARD FINDS THAT THE APPLICANT HAS FAILED TO ESTABLISH ITS STATUS AS A TRADE UNION UNDER THE ACT.

8. WE WOULD ADD THAT EVEN HAD THE APPLICANT SATISFIED THE BOARD WITH RESPECT TO ITS STATUS, THERE WOULD REMAIN A QUESTION WITH RESPECT TO THE FORM OF MEMBERSHIP EVIDENCE SUBMITTED BY THE APPLICANT.

9. THE MEMBERSHIP EVIDENCE IS CONTAINED IN AN ORDINARY RECEIPT BOOK AND CONSISTS OF INDIVIDUAL CARBON COPY RECEIPTS SIGNED BY THE COLLECTOR AND THE EMPLOYEE CONCERNED IN EACH CASE. THE RECEIPTS SHOW NO DATES AND EACH BEARS THE HEADING "MEMBERSHIP FEE". BENEATH THESE WORDS APPEARS THE SIGNATURE OF THE EMPLOYEE FOLLOWED BY AN INDICATION OF PAYMENT OF A DOLLAR - THE WORDS "ASSOCIATION DUES" AND THE SIGNATURE OF THE COLLECTOR. THE NAME OF THE APPLICANT, AS SET OUT IN THIS APPLICATION, DOES NOT APPEAR ANYWHERE ON THE RECEIPTS.

10. THE ABOVE EVIDENCE OF MEMBERSHIP FAILS TO SHOW THAT THE EMPLOYEES CLAIMED TO BE MEMBERS HAVE, AS THE BOARD REQUIRES, SIGNED A WRITTEN APPLICATION FOR MEMBERSHIP IN THE APPLICANT ASSOCIATION. THE MEMBERSHIP EVIDENCE THEREFORE, FAILS TO COMPLY WITH THE BOARD'S REQUIREMENTS IN THIS REGARD AND EVEN IF STATUS HAD BEEN ESTABLISHED, WOULD BE UNACCEPTABLE AND THE APPLICATION WOULD FAIL ON THAT GROUND IN ANY EVENT.

11. FOR ALL OF THE FOREGOING REASONS, THE APPLICATION IS DISMISSED.

15645-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) v. MELNOR MANUFACTURING LIMITED (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: RICHARD WATEROUS FOR THE RESPONDENT AND ROBERT WHITE, H. CARL ANDERSON FOR THE APPLICANT.

DECISION OF THE BOARD: MARCH 18, 1969.

1. THIS IS AN APPLICATION FOR CERTIFICATION. BY REGISTERED MAIL DATED FEBRUARY 7TH, 1969, THE RESPONDENT WAS ADVISED THAT THE HEARING OF THIS APPLICATION WOULD TAKE PLACE ON FEBRUARY 24TH, 1969. ON FEBRUARY 12TH, 1969, COUNSEL FOR THE RESPONDENT ADVISED THE REGISTRAR THAT HE WOULD BE OCCUPIED IN THE SUPREME COURT ON FEBRUARY 24TH AND THAT IN ADDITION, SEVERAL ASSESSMENT APPEALS IN WHICH HE WAS COUNSEL WERE SCHEDULED FOR FEBRUARY 24TH, 1969. ON FEBRUARY 14TH, 1969, THE REGISTRAR ADVISED COUNSEL FOR THE RESPONDENT AS FOLLOWS: "I POINT OUT THAT IT IS THE BOARD'S PRACTICE TO ADJOURN HEARINGS ONLY ON THE CONSENT OF BOTH PARTIES." THIS IS

THE ADMINISTRATIVE PRACTICE FOLLOWED BY THE REGISTRAR AND THE PARTIES ARE GIVEN THE OPPORTUNITY TO RENEW THEIR REQUEST FOR AN ADJOURNMENT AT THE HEARING. CONSENT WAS NOT OBTAINED AND ACCORDINGLY COUNSEL APPEARING FOR THE RESPONDENT AT THE HEARING (WHO APPEARS TO BE ENGAGED IN PRACTICE WITH COUNSEL WHO HAD BEEN RETAINED) REQUESTED AN ADJOURNMENT.

2. THE BOARD'S PRACTICE IS TO SCHEDULE HEARINGS FOR A FIXED TIME AND TO GIVE SUFFICIENT NOTICE OF THOSE HEARINGS, SO THAT PERSONS WHO INTEND TO APPEAR MAY MAKE THE NECESSARY ARRANGEMENTS. OF COURSE, IF THE PARTIES APPEAR AT THE HEARING AND REQUEST AN ADJOURNMENT BASED ON CIRCUMSTANCES BEYOND THEIR CONTROL AND IF TO PROCEED WOULD BE PREJUDICIAL TO THE PARTY MAKING THE REQUEST THE BOARD WILL GRANT AN ADJOURNMENT. IT HAS NOT BEEN THE PRACTICE OF THE BOARD TO GRANT ADJOURNMENTS MERELY FOR THE CONVENIENCE OF COUNSEL AS IT IS THE BOARD'S EXPERIENCE THAT IN THE FIELD OF LABOUR RELATIONS DELAYS MAY CAUSE SERIOUS DISADVANTAGES. HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION A.F.L. C.I.O.-C.L.C. LOCAL 197 AND NICK MASNEY, HOTELS LIMITED AND GROUP OF EMPLOYEES 1968 NOVEMBER MONTHLY REPORT O.L.R.B. 833, 1968 DECEMBER MONTHLY REPORT O.L.R.B. 965.

3. IN ADDITION, THIS APPLICATION WAS A SIMPLE CERTIFICATION PROCEEDING AND THE ISSUES WERE NOT SO COMPLEX THAT, COUNSEL UNABLE TO ATTEND, COULD NOT HAVE BRIEFED SOMEONE TO ATTEND IN HIS PLACE. SEE UNITED STEELWORKERS OF AMERICA AND WEINER ELECTRIC LIMITED, BOARD FILE NO. 15611-68-R, FEBRUARY 18, 1969. IN THIS REGARD WE NOTE THAT MR. WATEROUS WHO APPEARED BEFORE THE BOARD ON MONDAY, FEBRUARY 24TH AND WHO INDICATED THAT THIS MATTER HAD BEEN REFERRED TO HIM ON FRIDAY, FEBRUARY 21ST FULLY COMPREHENDED THE MATTERS INVOLVED SO AS TO FULLY REPRESENT THE RESPONDENT'S POSITION TO THE BOARD.

4. THE ONLY ISSUE THAT APPEARED CONTROVERSIAL WAS WHETHER OR NOT THE PERMANENT EMPLOYEES OF THE RESPONDENT SHOULD BE INCLUDED IN THE BARGAINING UNIT CONTAINING SEASONAL OR TEMPORARY EMPLOYEES. THE RESPONDENT MANUFACTURES DOMESTIC LAWN SPRINKLERS AND SEASONAL OR TEMPORARY EMPLOYEES ARE ENGAGED IN THE MAIN FROM THE END OF NOVEMBER UNTIL THE END OF FEBRUARY. THE RESPONDENT CONTENTED THAT IT WAS IN THE BEST INTERESTS OF THE PERMANENT EMPLOYEES TO BE SEPARATED FROM THE SEASONAL OR TEMPORARY EMPLOYEES. NONE OF THE PERMANENT EMPLOYEES, ALTHOUGH DULY NOTIFIED, ATTENDED AT THE HEARING TO OBJECT TO THEIR INCLUSION IN THE PROPOSED BARGAINING UNIT AND IT IS OUR OPINION THAT THE INTERESTS OF THE EMPLOYEES WOULD BE BETTER VOICED, BY THE EMPLOYEES THEMSELVES AND NOT

THE EMPLOYER. IN SEASONAL INDUSTRIES SUCH AS THE CANNING AND TOBACCO INDUSTRY, IT HAS BEEN THE PRACTICE OF THE BOARD TO INCLUDE THE SEASONAL OR TEMPORARY EMPLOYEES IN THE BARGAINING UNIT IF THE APPLICATION FOR CERTIFICATION WAS MADE DURING THE SEASON; BUT NOT TO INCLUDE THE SEASONAL OR TEMPORARY EMPLOYEES IF THE APPLICATION FOR CERTIFICATION WAS MADE IN THE OFF-SEASON. THIS APPLICATION WAS MADE DURING THE HEIGHT OF THE SEASON.

5. HAVING REGARD TO THE PARTICULAR CIRCUMSTANCES OF THIS CASE WE DO NOT FEEL THAT THERE IS SUFFICIENT REASON TO NOT INCLUDE THE TEMPORARY OR SEASONAL EMPLOYEES IN THE APPLIED FOR BARGAINING UNIT.

6. ACCORDINGLY, THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

7. THE BOARD FURTHER FINDS THAT THE TEMPORARY OR SEASONAL EMPLOYEES ARE INCLUDED IN THE AFORESAID BARGAINING UNIT.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON FEBRUARY 14TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

15692-68-R: COUNCIL OF CONCRETE-FORMING TRADE UNIONS (APPLICANT)
v. FORMALL LIMITED (RESPONDENT).

THE PRIMARY REASON FOR NOTING THE DECISION REPORTED BELOW IS BECAUSE IT IS THE FIRST TIME THAT A COUNCIL OF TRADE UNIONS COMPOSED OF VARIOUS TRADE UNIONS, AS DISTINCT FROM A COUNCIL COMPOSED OF LOCALS OF THE SAME UNION, HAS BEEN CERTIFIED BY THE BOARD UNDER THE PROVISIONS OF SECTION 8A OF THE LABOUR RELATIONS ACT.

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: R. KOSKIE, A. NEIL AND T. MICHAELS FOR THE APPLICANT, F.R. VON VEH AND E. DEL ZOTTO FOR THE RESPONDENT.

DECISION OF THE BOARD: MARCH 11, 1969.

1. THIS IS AN APPLICATION FOR CERTIFICATION BY A COUNCIL OF TRADE UNIONS COMPOSED OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721; LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506; OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 172; UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1190; AND INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793.

2. THE BOARD FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

3. THE BOARD FURTHER FINDS THAT THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721; LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506; OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 172; UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1190; AND INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 ARE TRADE UNIONS WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT. THE BOARD FURTHER FINDS THAT THE SAID LOCALS ARE THE CONSTITUENT UNIONS OF THE APPLICANT.

4. THE BOARD FURTHER FINDS THAT THE APPLICANT IS A COUNCIL OF TRADE UNIONS WITHIN THE MEANING OF SECTION 1(1)(E) OF THE LABOUR RELATIONS ACT.

5. THE BOARD IS SATISFIED THAT THE CONSTITUENT UNIONS OF THE APPLICANT HAVE VESTED APPROPRIATE AUTHORITY IN THE APPLICANT TO ENABLE IT TO DISCHARGE THE RESPONSIBILITIES OF A BARGAINING AGENT, PURSUANT TO SECTION 8A(1) OF THE ACT.

6. THE APPLICANT IS APPLYING FOR A UNIT COMPOSED OF ALL CONSTRUCTION EMPLOYEES. HAVING REGARD TO THE BOARD'S DECISION IN A. K. PENNER AND SONS CASE, O.L.R.B. MONTHLY REPORT, OCTOBER 1966, P. 493, THE BOARD IS ONLY PREPARED TO GRANT A UNIT COMPOSED OF THE TRADES IN THE EMPLOY OF THE RESPONDENT ON THE JOBS IN THE GEOGRAPHIC AREA CONCERNED AS OF THE DATE OF THE MAKING OF

THE APPLICATION. THE BOARD ACCORDINGLY FINDS THAT ALL IRONWORKERS, CONSTRUCTION LABOURERS, CEMENT MASONS AND CEMENT MASONS' APPRENTICES, CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT AND EMPLOYEES OF THE RESPONDENT ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTENANCE OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 5TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

15733-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. ROLLINS LUMBER LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: G.W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPFARANCES AT THE HEARING: F. A. ACTON AND HAROLD S. BLAKELY FOR THE APPLICANT; WILLIAM ANGE FOR THE RESPONDENT; AND LIONEL READ FOR A GROUP OF EMPLOYEES.

DECISION OF THE BOARD: MARCH 20, 1969.

• • •

2. THE RESPONDENT CARRIES ON A RETAIL LUMBER AND BUILDING SUPPLIES BUSINESS IN FOXBORO. THE APPLICANT HAS APPLIED FOR WHAT IS IN FACT AN ALL EMPLOYEE UNIT, SAVE AND EXCEPT OFFICE AND SALES STAFF AND PERSONS COVERED BY AN EARLIER CERTIFICATE ISSUED BY THE BOARD TO THE APPLICANT. THE RESPONDENT SUBMITS THAT THE BARGAINING UNIT SHOULD BE RESTRICTED TO THE EMPLOYEES WHO WORK IN THE SHOPS IN THE CONSTRUCTION OF WOODEN SECTIONS OF BUILDINGS AND OF

CABINETS AND CUPBOARDS. THE DIFFERENCE BETWEEN THE APPLICANT'S AND THE RESPONDENT'S PROPOSED UNITS ARE SIX EMPLOYEES WHO ARE ENGAGED IN DELIVERY AND IN LOADING AND UNLOADING THEIR TRUCKS. IT IS THE NORMAL PRACTICE OF THE BOARD IN THE KIND OF OPERATION CARRIED ON BY THE RESPONDENT TO INCLUDE THE TRUCK DRIVERS IN THE BARGAINING UNIT. AFTER CONSIDERING THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, WE HAVE COME TO THE CONCLUSION THAT THERE ARE NO CIRCUMSTANCES IN THIS CASE WHICH WOULD JUSTIFY A DEPARTURE FROM OUR REGULAR PRACTICE. ACCORDINGLY, THE BOARD FINDS FURTHER THAT ALL EMPLOYEES OF THE RESPONDENT AT FOXBORO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND EMPLOYEES IN THE RESPONDENT'S HOME IMPROVEMENT DIVISION ALREADY COVERED BY THE BOARD'S CERTIFICATE DATED NOVEMBER 5TH, 1965, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. AT THE HEARING IN THIS MATTER AN EMPLOYEE TENDERED A WRITTEN STATEMENT OF DESIRE IN OPPOSITION TO THE APPLICATION, SIGNED, IT WAS SAID, BY OTHER EMPLOYEES. THE EMPLOYEE IN QUESTION ADMITTED THAT FORM 8 (NOTICE TO EMPLOYEES OF APPLICATION FOR CERTIFICATION AND OF HEARING) HAD BEEN POSTED ON THE RESPONDENT'S PREMISES AND THAT HE HAD SEEN IT. FORM 8 SETS OUT IN DETAIL THE TIME WITHIN WHICH A STATEMENT OF DESIRE MUST BE FILED AND GOES ON TO PROVIDE THAT A STATEMENT OF DESIRE THAT IS NOT FILED BY THE TERMINAL DATE WILL NOT BE ACCEPTED BY THE BOARD. IN THE INSTANT CASE THE TERMINAL DATE WAS MARCH 7, 1969, A WEEK PRIOR TO THE DATE OF THE HEARING. IT SHOULD PERHAPS BE NOTED THAT WE ARE CONCERNED HERE WITH SECTION 48 OF THE BOARD'S RULES OF PROCEDURE WHICH SECTION WAS FORMULATED UNDER THE AUTHORITY OF SECTIONS 75(9) AND 77(2)(J) OF THE LABOUR RELATIONS ACT.

AFTER CONSIDERING THE REPRESENTATIONS OF THE PARTIES, THE BOARD REFUSED TO ACCEPT THE DOCUMENT. THE BOARD POINTED OUT THAT ITS GENERAL POLICY WAS TO INSIST ON A STRICT COMPLIANCE WITH SECTION 48 OF ITS RULES OF PROCEDURE AND THAT IT COULD SEE NO REASON FOR DEPARTING FROM THAT POLICY IN THE PRESENT CASE. THE BOARD INDICATED THAT IN ITS DECISION IN THE INSTANT CASE IT WOULD REFER TO DECISIONS ILLUSTRATIVE OF THIS POLICY. ACCORDINGLY, THE ATTENTION OF THE PARTIES IS DIRECTED TO: ADDRESSOGRAPH-MULTIGRAPH OF CANADA LIMITED CASE, O.L.R.B. MONTHLY REPORT, MARCH 1968, P. 1183; AND E & M LATHING CASE, O.L.R.B. MONTHLY REPORT, JUNE 1965, P. 209.

4. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 7TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT,

TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

5. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

15772-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) v. THE FALK CORPORATION OF CANADA LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: ROBERT WHITE AND BRUCE K. LEE FOR THE APPLICANT; D.J.D. SIMS, W.H. SEARS AND A.J. MACDONALD FOR THE RESPONDENT; NORMAN GARBUZZ FOR THE OBJECTORS.

DECISION OF THE BOARD: MARCH 27, 1969.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THERE WAS FILED A STATEMENT OF OBJECTIONS OR PETITION IN OPPOSITION TO THE APPLICATION. TWENTY-SEVEN EMPLOYEES WHO HAD JOINED THE UNION ALSO SIGNED THE PETITION IN OPPOSITION TO THE UNION. IN THE CIRCUMSTANCES, THE BOARD CONDUCTED ITS USUAL INQUIRY INTO THE ORIGIN-ATION, CIRCULATION OF THE DOCUMENT AND THE MANNER IN WHICH THE SIGNATURES THERETO WERE OBTAINED.

2. THE PETITIONERS WERE REPRESENTED BY NORMAN GARBUZZ WHO TESTIFIED ON THEIR BEHALF. HE STATED THAT HE HAD ORIGINATED THE PETITION AND SWORE THAT HE HAD HAD NO CONVERSATION WITH MANAGEMENT WITH RESPECT TO IT. THE EVIDENCE OF OTHER WITNESSES CONTRADICTS THIS STATEMENT AND CLEARLY ESTABLISHES THAT GARBUZZ DISCUSSED THE WHOLE SITUATION WITH MR. MACDONALD, VICE-PRESIDENT OF SALES, ON THE MORNING THAT THE PETITION WAS SIGNED. MACDONALD COULD NOT REMEMBER WHERE THIS MEETING WITH GARBUZZ TOOK PLACE, BUT RECOLLECTED THAT GARBUZZ TOLD HIM HE WAS HAVING A PETITION SIGNED AND NEEDED SOME ASSURANCES FOR THE EMPLOYEES BEFORE THEY WOULD SIGN THE PETITION. MACDONALD SAID THAT AT THIS MEETING HE GAVE NO SPECIFIC PROMISES, BUT SAID THAT THE COMPANY WOULD REVIEW ALL MATTERS.

3. RAYMOND BRUCE SAUNDERS TESTIFIED ON BEHALF OF THE UNION. HE WAS NOTIFIED BY A TELEPHONE CALL FROM GARBUZZ THAT A MEETING WAS TO BE HELD IN THE LUNCH ROOM AT THE PLANT FOR THE PURPOSE OF GETTING THE UNION OUT. SAUNDERS ATTENDED THE MEETING WHICH WAS

HELD AT 3.30 IN THE AFTERNOON. SAUNDERS SAID THAT GARBUTT ADDRESSED THE MEETING AND SAID THE PURPOSE WAS TO TRY TO ELIMINATE THE UNION. HE, GARBUTT, SAID HE COULD GET A BETTER OFFER FROM THE COMPANY. HE INDICATED THE OFFER WOULD PROVIDE WAGES EQUAL TO THOSE PAID AT GRAY-MIX (A CUSTOMER OF THE RESPONDENT) WITH A RATE OF PAY OF \$3.36 PER HOUR PLUS BENEFITS. GARBUTT TOLD THE MEETING HE JUST HAD TO TAKE THE COMPANY'S WORD FOR THE \$3.36 RATE. THIS EVIDENCE CLEARLY SUPPORTS THAT OF MACDONALD INDICATING THAT GARBUTT HAD DISCUSSED THE MATTER WITH HIM PRIOR TO THE SIGNING OF THE PETITION. SAUNDERS ALSO TESTIFIED THAT HE CAME INTO THE PLANT ON THE MORNING OF THE MEETING AND DISCUSSED THE SITUATION WITH GARBUTT AND THAT GARBUTT TOLD HIM HE THOUGHT THE COMPANY WOULD COME ACROSS WITH MORE MONEY, BENEFITS AND EXTRA HOLIDAYS. GARBUTT, WHO IS AN ASSEMBLER IN THE PLANT, THEN SET UP A MEETING FOR SAUNDERS WITH MACDONALD. SAUNDERS SAID HE WENT IN TO SEE MACDONALD TO ASK HIM WHAT IT WAS ALL ABOUT. HE TESTIFIED THAT THEY HAD A GENERAL DISCUSSION ABOUT THE COMPANY AND THE WAY "THINGS COULD BE BROUGHT TO BE FIXED".

4. IN ADDITION, GARBUTT IN STATING THAT THERE HAD BEEN NO MEETING WITH MANAGEMENT IN THE MATTER, COMPLETELY IGNORED A CONFERENCE HELD WITH, AND CONFIRMED BY, MACDONALD DURING THE COURSE OF THE AFTERNOON'S MEETING OF EMPLOYEES. THE EMPLOYEES ELECTED A COMMITTEE TO SPEAK TO MANAGEMENT IN ORDER TO GET SOME ASSURANCE THAT THE COMPANY WOULD BACK UP GARBUTT'S CLAIMS. GARBUTT WAS A MEMBER OF THAT COMMITTEE.

5. THE COMMITTEE MET WITH MR. MACDONALD AND ACCORDING TO SAUNDERS EVIDENCE DISCUSSED WHETHER THE EMPLOYEES COULD TRUST THE COMPANY. THEY WANTED ASSURANCE OF WHAT THEY WERE GOING TO GET BEFORE THEY SIGNED "THE PAPER" AGAINST THE UNION. THEY WANTED TO BE SURE, SAUNDERS SAID, OF EQUAL PAY AND BENEFITS WITH GRAY-MIX. HE THEN STATED THAT MACDONALD REPLIED THAT THE EMPLOYEES COULD GO BY THAT, AND THAT HE COULDN'T PUT ANYTHING IN WRITING BUT WOULD GUARANTEE THAT SOMETHING WOULD BE DONE ABOUT THE SITUATION.

6. MACDONALD IN HIS TESTIMONY SAID THAT HE TOLD THEM THE COMPANY WOULD REVIEW THE ENTIRE PICTURE FOR THEM. HE ADMITS THAT THERE WAS SOME DISCUSSION ABOUT GRAY-MIX RATES, BUT THAT NOTHING SPECIFIC WAS SAID ABOUT WAGES AND BENEFITS. HE SAID THAT HE DID SAY THAT ALL FACETS WOULD BE REVIEWED BY THE COMPANY.

7. THE COMMITTEE REPORTED BACK TO THE EMPLOYEES. THE REPORT WAS MADE BY DOUGLAS JEFFERIES. HE TOLD THE EMPLOYEES THEY COULD BE ASSURED OF GETTING THE SAME PAY AND BENEFITS AS GRAY-MIX. IT WAS AGREED THAT THE COMPANY WOULD BE GIVEN TWO WEEKS, AND IF IT DID NOT COME ACROSS, THE UNION WOULD BE BROUGHT BACK. THE PETITION WAS THEN SIGNED.

8. THE BOARD IS NOT SATISFIED, ON THE BASIS OF ALL THE EVIDENCE, WITH THE TRUTH OF GARBUTT'S STATEMENTS WITH RESPECT TO THE ORIGINATON OF THE PETITION. IF HE WAS NOT UNTRUTHFUL WITH RESPECT TO THAT, HE WAS AT LEAST CAREFUL NOT TO DISCLOSE MATTERS VITAL TO A PROPER CONSIDERATION OF THE ORIGINATON OF THE DOCUMENTS. THIS IN ITSELF IS FATAL TO THE PETITION. FURTHERMORE, THE INVOLVEMENT OF MANAGEMENT IN THE WHOLE SCHEME WHETHER DELIBERATE OR BY INVITATION WAS SUCH AS TO VITIATE THE PETITION AS A DOCUMENT REPRESENTING THE FREE AND VOLUNTARY CHOICE OF THOSE WHO SIGNED IT. WE, THEREFORE, FIND THE PETITION DOES NOT CAST DOUBT ON THE EVIDENCE OF MEMBERSHIP FILED BY THE RESPONDENT SO AS TO CAUSE THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

9. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

10. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, NIGHT SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN AND NIGHT SUPERVISOR, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

11. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 13, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

12. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

15773-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 183 (APPLICANT) v. ASHVALE TREE SURGEONS CO LTD (RESPONDENT).

BEFORE: J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: J.B. WATERMAN AND A. SPADA FOR THE APPLICANT. D.R. PETERSON FOR THE RESPONDENT.

DECISION OF THE BOARD: MARCH 25, 1969.

• • •

3. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD NOTES THAT SINCE SIXTY PER CENT OF THE WORK ENGAGED IN BY THE RESPONDENT'S EMPLOYEES HAS TO DO WITH THE TRIMMING OF TREES AND A FURTHER TWENTY PER CENT HAS TO DO WITH THE REMOVAL OF DEAD OR INFECTED TREES, THE BOARD THEREFORE FINDS THAT THE RESPONDENT'S EMPLOYEES WITH WHOM WE ARE HERE CONCERNED ARE PRIMARILY EMPLOYED IN SILVACULTURE WITHIN THE MEANING OF SECTION 2(c) OF THE LABOUR RELATIONS ACT AND ARE THEREFORE PERSONS WITH RESPECT TO WHOM THE LABOUR RELATIONS ACT APPLIES.

4. THE BOARD THEREFORE FINDS THAT ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 13TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(j) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

15811-68-R: LOCAL 280 OF THE HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION. A.F.L.-C.I.O.-C.L.C. (APPLICANT) v. THE SAVARIN LIMITED (RESPONDENT).

BEFORE: H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS P.J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: IAN SCOTT, FRANK CORTESE FOR THE APPLICANT, EDWARD ASSAF FOR THE RESPONDENT.

DECISION OF THE BOARD: MARCH 27, 1969.

• • •

2. THE REPRESENTATIVE FOR THE RESPONDENT AT THE HEARING REQUESTED AN ADJOURNMENT OF THIS MATTER FOR TWO OR THREE WEEKS TO PERMIT HIM TO PREPARE HIMSELF FOR REPRESENTATIONS TO THE BOARD BECAUSE HE SAID HE HAD BEEN AWAY OR OTHERWISE OCCUPIED SINCE THE DATE OF THIS APPLICATION AND HAD NOT HAD SUFFICIENT TIME TO DEAL WITH THE APPLICATION. THE APPLICANT OPPOSED THE ADJOURNMENT ON THE BASIS THAT ITS RIGHTS WOULD BE PREJUDICED BY ANY DELAY.

3. UNLESS THERE ARE EXCEPTIONAL, EXTENUATING CIRCUMSTANCES OR CONSENT OF THE PARTIES, THE BOARD'S POLICY IS NOT TO GRANT AN ADJOURNMENT OF CERTIFICATION PROCEEDINGS, AS IN ITS EXPERIENCE, DELAYS CAN CAUSE SERIOUS DISADVANTAGES TO THE PARTIES. THIS APPLICATION WAS MADE ON MARCH 7TH, 1969 AT WHICH TIME NOTICE AND THE PROPER DOCUMENTS WERE GIVEN TO THE RESPONDENT. MR. ASSAF, APPEARING FOR THE RESPONDENT AT THE HEARING, ADMITTED RECEIVING THESE DOCUMENTS AND BEING AWARE OF THESE PROCEEDINGS FOR AT LEAST A WEEK PRIOR TO THE HEARING. ON MARCH 24TH, A "NOTICE TO ALL EMPLOYEES IN THE LOUNGE" WAS POSTED WITH RESPECT TO THIS APPLICATION UNDER THE SIGNATURE OF EDWARD ASSAF. FURTHER, THE RESPONDENT SUBMITTED TO THE BOARD ITS REPLY TO THE APPLICATION AND LISTS OF EMPLOYEES. THERE WERE NO MATTERS IN THE APPLICATION THAT COULD NOT HAVE BEEN DEALT WITH IN A PROPER MANNER AT THE HEARING BY THE RESPONDENT'S REPRESENTATIVE AND THERE WAS OBVIOUSLY SUFFICIENT TIME PRIOR TO THE HEARING FOR HIM TO HAVE ARRANGED FOR OTHER REPRESENTATION OF THE RESPONDENT IF HE SO DESIRED. IN THIS REGARD WE REFER TO THE CASES OF NICK MASNEY HOTELS LIMITED, O.L.R.B., MONTHLY REPORT, NOVEMBER 1968 AT PAGE 833 AND O.L.R.B. MONTHLY REPORT DECEMBER 1968 AT PAGE 965; AND MELNOR MANUFACTURING LIMITED, BOARD FILE NO. 15645-68-R. FOR ALL OF THE ABOVE REASONS THE REQUEST OF THE RESPONDENT IS DENIED.

4. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

5. THE BOARD FURTHER FINDS THAT ALL FULL TIME AND PART TIME MALE AND FEMALE TAPMEN, BARTENDERS, BEVERAGE WAITERS, BAR BOYS AND IMPROVERS EMPLOYED IN THE BEVERAGE DEPARTMENTS OF THE RESPONDENT AT 366 BAY STREET, TORONTO, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 14TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

15812-68-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION 141 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. MATTHEWS GROUP LIMITED (RESPONDENT).

BEFORE: G.W. REED, Q.C., CHAIRMAN AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: T.E. ARMSTRONG, B. CHERCOVER AND E.H. WINEGARDEN FOR THE APPLICANT, AND P.T. MITCHES AND K. HACKETT FOR THE RESPONDENT.

DECISION OF THE BOARD: MARCH 27, 1969.

3. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT. WITH RESPECT TO THIS FINDING REFERENCE IS MADE TO TOPS MARINA MOTOR HOTEL, O.L.R.B. MONTHLY REPORT, JANUARY 1964, PAGE 583 AND CANADIA NIAGARA FALLS LIMITED, O.L.R.B. MONTHLY REPORT, APRIL 1966, PAGE 44.

4. THE APPLICANT IS APPLYING FOR A BARGAINING UNIT CONSISTING OF ALL CONSTRUCTION TRUCK DRIVERS OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF BOARD AREA No. 3. INCLUDED IN THE GROUP SOUGHT ARE THREE DUMP TRUCK DRIVERS WHO WERE EMPLOYED AT A PROJECT IN SARNIA IN BOARD AREA No. 2 ON THE DATE OF THE MAKING OF THE APPLICATION. IT IS NOT THE PRACTICE OF THE BOARD TO GRANT "AT AND OUT OF" UNITS IN THE CONSTRUCTION INDUSTRY SAVE IN EXCEPTIONAL CIRCUMSTANCES AND, IN OUR VIEW, THESE CIRCUMSTANCES DO NOT EXIST IN THIS CASE. NOR IS IT THE PRACTICE OF THE BOARD TO COMBINE SEPARATE BOARD AREAS. CONSEQUENTLY, THE DUMP TRUCK DRIVERS IN SARNIA WOULD NOT BE INCLUDED IN A BARGAINING UNIT RESTRICTED TO BOARD AREA No. 3. THE BOARD NOTES THAT THE APPLICANT DID NOT SEEK A SEPARATE CERTIFICATE FOR THESE EMPLOYEES.

5. ON THE DAY OF THE MAKING OF THE APPLICATION THE RESPONDENT HAD THE FOLLOWING CLASSIFICATIONS EMPLOYED IN BOARD AREA No. 3:

DUMP TRUCK DRIVERS
TRACTOR-TRAILER DRIVER
PIPE DELIVERY DRIVER, AND
FUEL OR GAS TRUCK DRIVER

TWO OF THE DUMP TRUCK DRIVERS ARE ENGAGED EXCLUSIVELY IN HAULING AGGREGATE FROM A CRUSHER TO STOCK PILES IN THE RESPONDENT'S GRAVEL PIT. A THIRD DOES THE SAME WORK BUT, IN ADDITION, DELIVERS AGGREGATE BOTH TO RESPONDENT'S WORK SITES AND TO THIRD PARTY PURCHASERS.

THE OTHER FOUR DUMP TRUCK DRIVERS ARE DISPATCHED FROM THE RESPONDENT'S MAIN YARD EACH MORNING TO WORK SITES OF THE RESPONDENT WHERE THEY ARE ENGAGED 90 PER CENT OF THEIR TIME IN HAULING AGGREGATE TO THE SITES AND TAKING AWAY UNWANTED MATERIALS FROM THE SITES.

6. THE TRACTOR-TRAILER DRIVER SPENDS 98 PER CENT OF HIS TIME HAULING HEAVY CONSTRUCTION EQUIPMENT TO AND FROM AND BETWEEN RESPONDENT'S WORK SITES. HIS EQUIPMENT CONSISTS OF A TRACTOR AND A FLOAT ATTACHED THERETO. THE CONCRETE PIPE DRIVER HAULS CONCRETE PIPE FROM RESPONDENT'S CONCRETE PIPE PLANT TO RESPONDENT'S SITES AND TO THIRD PARTY PURCHASERS. THE FUEL TRUCK DRIVER DELIVERS GASOLINE TO EQUIPMENT ON RESPONDENT'S SITES BUT NOT TO RESPONDENT'S PIT, WHERE GASOLINE PUMPS HAVE BEEN RECENTLY INSTALLED.

7. HAVING REGARD TO THE PRINCIPLES AND FINDINGS OF THE BOARD IN CEDARHURST PAVING CO. LIMITED, O.L.R.B. MONTHLY REPORT, DECEMBER 1964, PAGE 442, THE BOARD FURTHER FINDS THAT ALL DUMP TRUCK DRIVERS, TRACTOR-TRAILER DRIVERS AND FUEL OR GAS TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

8. FOR PURPOSES OF CLARITY THE BOARD DECLares THAT DUMP TRUCK DRIVERS EMPLOYED IN THE RESPONDENT'S AGGREGATE DIVISION AND OPERATING IN ITS GRAVEL PIT AND CONCRETE PIPE DRIVERS EMPLOYED IN ITS CONCRETE PIPE DIVISION ARE NOT INCLUDED IN THE BARGAINING UNIT.

9. ON THE BASIS OF THE ABOVE FINDINGS THERE WERE SIX EMPLOYEES IN THE BARGAINING UNIT ON THE DATE OF THE MAKING OF THE APPLICATION. THE APPLICANT HAS AS EMPLOYEES THREE OF THE SIX EMPLOYEES. ACCORDINGLY, THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 7 ABOVE, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 18, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

10. A REPRESENTATION VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 7 ABOVE. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

11. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

12. THE MATTER IS REFERRED TO THE REGISTRAR.

15842-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
(APPLICANT) v. L & S HAULAGE LTD. (RESPONDENT).

BEFORE: G.W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: H. A. HERRON AND J. RUSSUTO FOR THE APPLICANT AND E. FARKAS FOR THE RESPONDENT.

* * *

3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. IN SUPPORT OF THE APPLICATION THERE WERE FILED, INTER ALIA, FOUR STATEMENTS OF MEMBERSHIP. THESE STATEMENTS ARE IN TWO PARTS. THE FIRST PART IS A STATEMENT SIGNED BY THE MEMBER TO THE EFFECT THAT HE HAS BEEN A MEMBER OF THE APPLICANT SINCE A NAMED DATE AND THAT HE IS AT PRESENT A MEMBER IN GOOD STANDING. THE SECOND PART PROVIDES AS FOLLOWS:

FOR OFFICE USE ONLY

THIS IS TO CERTIFY THAT BROTHER.....
HAS BEEN A MEMBER IN GOOD STANDING OF LOCAL 793,
INTERNATIONAL UNION OF OPERATING ENGINEERS, SINCE
....., AND IS A MEMBER IN
GOOD STANDING AT THE PRESENT TIME.

.....
NAME AND OFFICIAL POSITION.

.....
DATE.

THE FIRST PART OF EACH OF THE FOUR STATEMENTS WAS PROPERLY COMPLETED AND SIGNED BY THE MEMBERS. THE SECOND PART, HEADED "FOR OFFICE USE ONLY" WAS SIGNED AND DATED BUT THE BLANKS WERE NOT FILLED IN. IN OTHER WORDS, THE PERSON SIGNING THE SECOND PORTION OF THE STATEMENT DOES NOT CERTIFY AS TO THE REQUIRED FACTS.

5. IN THE FRANK LICARI AND SONS CASE, O.L.R.B. MONTHLY REPORT, APRIL 1967, PAGE 57, THE BOARD WAS CONCERNED WITH SIMILAR DOCUMENTS, NAMELY, CERTIFICATES OF MEMBERSHIP AND HAS THIS TO SAY ABOUT THEM AT PAGE 58:

...AMONG OTHER THINGS THESE CERTIFICATES MUST CONTAIN STATEMENTS BY THE EMPLOYEE THAT HE IS A MEMBER OF THE UNION AND THE MONTH AND YEAR FOR WHICH HIS DUES ARE PAID. THESE STATEMENTS BY THE EMPLOYEE MUST BE CERTIFIED BY AN OFFICER OF THE UNION WHO IS IN A POSITION TO DO SO. THERE IS THUS A TWOFOLD REQUIREMENT AND IN THIS CASE THE FIRST REQUIREMENT, THE STATEMENT BY THE EMPLOYEE, HAS NOT BEEN MET.

6. IN THE INSTANT CASE IT IS THE SECOND REQUIREMENT WHICH HAD NOT BEEN MET, THAT IS, THE STATEMENTS BY THE EMPLOYEES HAVE NOT BEEN CERTIFIED BY AN OFFICER OF THE UNION. IN THESE CIRCUMSTANCES, THE BOARD IS NOT PREPARED TO ACCEPT THE STATEMENTS OF MEMBERSHIP.

WITHOUT THE SAID STATEMENTS THE APPLICANT HAS LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT AS MEMBERS. THE APPLICATION IS THEREFORE DISMISSED.

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED
OF DURING MARCH

15678-68-R: CLAUDE ABRAMS INDUSTRIES LTD. OPERATING AS PUBLIC
OPTICAL (APPLICANT) v. INTERNATIONAL UNION OF DOLL & TOY WORKERS
OF THE U.S.A. & CANADA (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: LOUIS W. ABRAMS FOR THE APPLICANT,
J. SACK, ROM CORRIGAN FOR THE RESPONDENT.

DECISION OF THE BOARD: MARCH 14, 1969.

1. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING BARGAINING RIGHTS MADE BY THE APPLICANT COMPANY PURSUANT TO SECTION 46(1)(B) OF THE LABOUR RELATIONS ACT. THE RESPONDENT WAS GRANTED CERTIFICATION BY THIS BOARD ON OCTOBER 18TH, 1968. THERE WAS SUBSEQUENT NEGOTIATIONS WHICH LED TO THE APPOINTMENT OF A CONCILIATION OFFICER BY THE MINISTER AND AS A RESULT OF THAT APPOINTMENT, THE MINISTER REPORTED TO THE PARTIES ON DECEMBER 11TH, 1968 THAT HEHAD NOT DECIDED TO APPOINT A BOARD OF CONCILIATION IN THE DISPUTE.

2. THE RESPONDENT ALLEGED THAT THE APPLICATION WAS IMPROPER AND UNTIMELY BY REASON OF THE PROVISIONS OF SECTION 46(1)(B) OF THE LABOUR RELATIONS ACT.

3. THE BOARD HAS FOUND THAT A SIMILAR SECTION OF THIS ACT DID NOT CONFER ANY RIGHT ON AN EMPLOYER TO MAKE SUCH AN APPLICATION. GENAIRE LIMITED AND INTERNATIONAL ASSOCIATION OF MACHINISTS 1958 C.L.S. 76-586, 1958 CCH LLR 12172, TRANSFER BINDER '55-59 ¶16101.

4. HOWEVER, THE BOARD'S FINDING IN THE GENAIRE LIMITED CASE IN THAT REGARD WAS PLACED IN DOUBT ON AN APPLICATION BY WAY OF ORIGINATING NOTICE FOR AN ORDER IN THE NATURE OF CERTIORARI QUASHING THAT DECISION OF THE BOARD. IN THAT APPLICATION McRUER, C.J.H.C. IN DEALING WITH WHAT WAS THEN SECTION 44 OF THE LABOUR RELATIONS ACT, AND WHICH IS SIMILAR TO SECTION 46 OF THE PRESENT ACT SAID:

"IT IS ARGUED ON BEHALF OF THE APPLICANT THAT THE ACT OUGHT NOT TO BE READ IN SUCH A WAY AS TO DENY THE EMPLOYER A RIGHT TO MAKE AN APPLICATION FOR A DECLARATION THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE CIRCUMSTANCES OF THIS CASE. THE ARGUMENT IS THAT, ALTHOUGH SEC. 44 IS IN THE NEGATIVE IT IS TO BE IMPLIED THAT AFTER THIRTY DAYS HAVE ELAPSED AFTER THE MINISTER HAS INFORMED THE PARTIES THAT HE DOES NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD EITHER PARTY MAY APPLY TO THE BOARD FOR THE DECLARATION. AS AGAINST THIS IT IS ARGUED THAT SEC. 41 GIVES TO EMPLOYEES CERTAIN RIGHTS TO APPLY TO THE BOARD ON THE CONDITIONS SET OUT THEREIN. LIKEWISE SEC. 45 GIVES EMPLOYERS AND EMPLOYEES CERTAIN RIGHTS TO APPLY FOR A DECLARATION THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNITS AND THAT SEC. 44 IS MERELY NEGATIVE IN THAT IT POSTPONES THE RIGHTS TO APPLY WHERE THE TRADE UNION HAS NOT MADE A COLLECTIVE AGREEMENT WITHIN A YEAR, UNTIL THIRTY DAYS AFTER THERE HAS BEEN A REPORT OF A CONCILIATION BOARD OR THE MINISTER HAS REFUSED TO APPOINT A CONCILIATION BOARD.

[PARTY AFFECTED MAY APPLY UNDER S. 68]

IN THE VIEW THAT I TAKE OF THIS CASE I DO NOT THINK THAT IT IS NECESSARY FOR ME TO DECIDE THIS MATTER. BUT, GENERALLY SPEAKING, IN READING THE ACT AS A WHOLE I WOULD BE OF THE OPINION THAT WHERE THE ACT PROVIDES THAT NO APPLICATION SHALL BE MADE UNTIL CERTAIN EVENTS HAVE HAPPENED, IT IMPLIES THAT AFTER THOSE EVENTS HAVE HAPPENED AN APPLICATION MAY BE MADE, AND IF THAT BE TRUE, SUCH APPLICATION MIGHT BE MADE BY ANYONE AFFECTED. FOR INSTANCE, UNDER SEC. 42 THERE IS NO PROVISION AS TO WHO MAY APPLY FOR A DECLARATION BUT UNQUESTIONABLY THE FACT THAT THE BOARD IS GIVEN POWER TO MAKE AN ORDER IMPLIES THAT ANYONE WHO WOULD BE AFFECTED BY THE ORDER HAS A RIGHT TO BE HEARD."

GENAIRE LTD. AND INTERNATIONAL ASSOCIATION OF MACHINISTS AND THE
ONTARIO LABOUR RELATIONS BOARD, 1958 CCH LLR TRANSFER BINDER '55-
'59 ¶15,188, 1958 (O.R.) 637, 14 D.L.R. (2d) 201.

5. EVEN IF WE WERE TO ASSUME THAT AN APPLICATION MAY BE MADE PURSUANT TO SECTION 46 THEN THE RIGHT TO APPLY IS POSTPONED FOR ONE YEAR AFTER THE TRADE UNION IS CERTIFIED. RONALD JAMES ROBERTS AND
INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA (UAW) LOCAL 222, BOARD FILE NO. 12673-
68-R, FEBRUARY 22ND, 1967. LEO LAVOIE V. THE LUMBER & SAWMILL
WORKERS UNION LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS &
JOINERS OF AMERICA AFL-CIO-CLC, 1968 DECEMBER MONTHLY REPORTS, O.L.
R.B. 924. THIS APPLICATION HAVING BEEN MADE BY THE RESPONDENT WITH-
IN ONE YEAR AFTER CERTIFICATION IS THEREFORE PREMATURE.

6. THE APPLICATION IS ACCORDINGLY DISMISSED.

15843-68-R: REFFLINGHAUS CONSTRUCTION COMPANY LIMITED (APPLICANT) v.
THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (COUNTIES
OF OXFORD, HURON, PERTH, MIDDLESEX, BRUCE AND ELGIN) (RESPONDENT).

BEFORE: J.D. O'SHEA, VICE CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R.W. TEAGLE.

DECISION OF THE BOARD: MARCH 13, 1969.

1. THE APPLICANT HAS APPLIED PURSUANT TO THE PROVISIONS OF SECTION 43 OF THE LABOUR RELATIONS ACT FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT UNION. WHILE SECTION 43 OF THE ACT PERMITS EMPLOYEES TO MAKE AN APPLICATION FOR TERMINATION, IT DOES NOT CONTEMPLATE THAT SUCH AN APPLICATION CAN BE MADE BY AN EMPLOYER UNDER THAT SECTION. IN THESE CIRCUMSTANCES, THIS APPLICATION MUST BE DISMISSED.

2. IN ADDITION, HOWEVER, IT IS TO BE NOTED THAT THE APPLICANT IN ITS APPLICATION STATES THAT "THE APPLICANT WILL NOT BE EMPLOYING ANY CARPENTERS IN THE FUTURE.....THE APPLICANT DOES NOT NOW EMPLOY ANY CARPENTERS." THE BOARD IN THESE CIRCUMSTANCES WISHES TO DRAW TO THE ATTENTION OF THE APPLICANT THE DECISION OF THE BOARD IN THE BLH-BERTRAM LIMITED CASE, BOARD FILE 15415-68-R, DATED JANUARY 17TH, 1969.

3. IN THE CIRCUMSTANCES OUTLINED ABOVE, THE BOARD FINDS THAT THE APPLICANT HAS FAILED TO MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND THE BOARD THEREFORE DISMISSES THE APPLICATION PURSUANT TO THE PROVISIONS OF SECTION 46(1) OF THE BOARD'S RULES OF PROCEDURE.

INDEXED ENDORSEMENTS - PROSECUTION

15740-68-U: THE FOUNDATION COMPANY OF CANADA LIMITED AND A. D. ROSS & COMPANY LIMITED (APPLICANTS) v. GERARD BLAIS, RICHARD R. BLAIS, ROGER LALANDE, NORMAND PACQUETTE, PAUL AUGER, RALPH GIBSONS, RONALD McGRAW, AND OMAR LEBLANC AND ANDRE LALANDE (RESPONDENTS).

BEFORE: J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS A. MAIN AND F.W. MURRAY.

APPEARANCES AT THE HEARING: E. HOREMBALA FOR THE APPLICANTS, ANDRE LALANDE, ROGER LALANDE, RICHARD BLAIS AND GERARD BLAIS FOR THE RESPONDENTS.

DECISION OF THE BOARD: MARCH 19, 1969.

1. THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST GERARD BLAIS, RICHARD R. BLAIS, ROGER LALANDE, NORMAND PACQUETTE, PAUL AUGER, RALPH GIBSONS, RONALD McGRAW, OMAR LEBLANC AND ANDRE LALANDE, THE RESPONDENTS IN THIS MATTER, FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:

THAT THE SAID GERARD BLAIS, RICHARD R. BLAIS AND NORMAND PACQUETTE DID CONTRAVENE SECTION 57(1) OF THE LABOUR RELATIONS ACT IN THAT THEY DID ON FEBRUARY 21ST, 24TH, 25TH AND 26TH, 1969, ENGAGE IN UNLAWFUL PICKETING AT OR NEAR THE APPLICANTS' IRON ORE RECOVERY PROJECT FOR THE INTERNATIONAL NICKEL COMPANY OF CANADA LIMITED AT COPPER CLIFF, THEREBY CAUSING OTHER EMPLOYEES OF THE APPLICANTS TO ENGAGE IN AN UNLAWFUL STRIKE, WHICH THE SAID RESPONDENTS KNEW OR OUGHT TO HAVE KNOWN WOULD BE A PROBABLE AND REASONABLE CONSEQUENCE OF SUCH UNLAWFUL PICKETING, AND

THAT THE SAID ROGER LALANDE DID CONTRAVENE SECTION 57(1) OF THE LABOUR RELATIONS ACT IN THAT HE DID ON FEBRUARY 21ST, 24TH, 25TH, 26TH AND 27TH, 1969, ENGAGE IN UNLAWFUL PICKETING AT OR NEAR THE APPLICANT'S IRON ORE RECOVERY PROJECT FOR THE INTERNATIONAL NICKEL COMPANY OF CANADA LIMITED AT COPPER CLIFF, THEREBY CAUSING OTHER EMPLOYEES OF THE APPLICANTS TO ENGAGE IN AN UNLAWFUL STRIKE, WHICH THE SAID RESPONDENT KNEW OR OUGHT TO HAVE KNOWN WOULD BE A PROBABLE AND REASONABLE CONSEQUENCE OF SUCH UNLAWFUL PICKETING, AND

THAT THE SAID PAUL AUGER DID CONTRAVENE SECTION 57(1) OF THE LABOUR RELATIONS ACT IN THAT HE DID ON FEBRUARY 21ST AND 24TH, 1969, ENGAGE IN UNLAWFUL PICKETING AT OR NEAR THE APPLICANTS' IRON ORE RECOVERY PROJECT FOR THE INTERNATIONAL NICKEL COMPANY OF CANADA LIMITED AT COPPER CLIFF, THEREBY CAUSING OTHER EMPLOYEES OF THE APPLICANTS TO ENGAGE IN AN UNLAWFUL STRIKE, WHICH THE SAID RESPONDENT KNEW OR OUGHT TO HAVE KNOWN WOULD BE A PROBABLE AND REASONABLE CONSEQUENCE OF SUCH UNLAWFUL PICKETING, AND

THAT THE SAID RALPH GIBSONS DID CONTRAVENE SECTION 57(1) OF THE LABOUR RELATIONS ACT IN THAT HE DID ON FEBRUARY 21ST, 1969, ENGAGE IN UNLAWFUL PICKETING AT OR NEAR THE APPLICANTS' IRON ORE RECOVERY PROJECT FOR THE INTERNATIONAL NICKEL COMPANY OF CANADA LIMITED AT COPPER CLIFF, THEREBY CAUSING OTHER EMPLOYEES OF THE APPLICANTS TO ENGAGE IN AN UNLAWFUL STRIKE, WHICH THE SAID RESPONDENT KNEW OR OUGHT TO HAVE KNOWN WOULD BE A PROBABLE AND REASONABLE CONSEQUENCE OF SUCH UNLAWFUL PICKETING, AND

THAT THE SAID RONALD MCGRAW DID CONTRAVENE SECTION 57(1) OF THE LABOUR RELATIONS ACT IN THAT HE DID ON FEBRUARY 24TH, 1969, ENGAGE IN UNLAWFUL PICKETING AT OR NEAR THE APPLICANT'S IRON ORE RECOVERY PROJECT FOR THE INTERNATIONAL NICKEL COMPANY OF CANADA LIMITED AT COPPER CLIFF, THEREBY CAUSING OTHER EMPLOYEES OF THE APPLICANTS TO ENGAGE IN AN UNLAWFUL STRIKE, WHICH THE SAID RESPONDENT KNEW OR OUGHT TO HAVE KNOWN WOULD BE A PROBABLE AND REASONABLE CONSEQUENCE OF SUCH UNLAWFUL PICKETING, AND

THAT THE SAID OMAR LEBLANC AND ANDRE LALANDE DID CONTRAVENE SECTION 57(1) OF THE LABOUR RELATIONS ACT IN THAT THEY DID ON FEBRUARY 27TH, 1969, ENGAGE IN UNLAWFUL PICKETING AT OR NEAR THE APPLICANTS' IRON ORE RECOVERY PROJECT FOR THE INTERNATIONAL NICKEL COMPANY OF CANADA LIMITED AT COPPER CLIFF, THEREBY CAUSING OTHER EMPLOYEES OF THE APPLICANTS TO ENGAGE IN AN UNLAWFUL STRIKE, WHICH THE SAID RESPONDENTS KNEW OR OUGHT TO HAVE KNOWN WOULD BE A PROBABLE AND REASONABLE CONSEQUENCE OF SUCH UNLAWFUL PICKETING.

2.

THE APPROPRIATE DOCUMENTS WILL ISSUE.

15770-68-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA,
LOCAL 506 (APPLICANT) v. FAGA FORMS LIMITED, ANTONIO FONTANO AND
GUIDO MORRELLI (RESPONDENTS).

BEFORE: J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
P.J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: R. KOSKIE AND A. NEIL FOR THE
APPLICANT, J.P. SANDERSON AND F.R. VON VEH FOR THE
RESPONDENT.

DECISION OF THE BOARD: MARCH 24, 1969.

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION OF THE RESPONDENTS FOR OFFENCES ALLEGED TO HAVE BEEN COMMITTED UNDER THE LABOUR RELATIONS ACT.

2. SINCE THE EVIDENCE FAILED TO DISCLOSE ANY SUBSTANCE TO THE ALLEGATIONS MADE AGAINST THE RESPONDENT GUIDO MORRELLI, THE APPLICATION WITH RESPECT TO GUIDO MORRELLI IS ACCORDINGLY DISMISSED.

3. THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENTS FAGA FORMS LIMITED AND ANTONIO FONTANO FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:

(a) THAT THE RESPONDENT FAGA FORMS LIMITED BEING AN EMPLOYER AND THE RESPONDENT ANTONIO FONTANO BEING A PERSON ACTING ON BEHALF OF THE RESPONDENT COMPANY DID REFUSE, CONTRARY TO SECTION 50(A) OF THE LABOUR RELATIONS ACT, TO CONTINUE TO EMPLOY FLORENTINO C. CORREIA BECAUSE HE WAS A MEMBER OF THE APPLICANT ON FRIDAY, FEBRUARY 24TH, 1969, AND AGAIN ON FRIDAY, MARCH 7TH, 1969, AT METROPOLITAN TORONTO.

(b) THAT THE RESPONDENT FAGA FORMS LIMITED AND THE RESPONDENT ANTONIO FONTANO BEING A PERSON ACTING ON BEHALF OF THE RESPONDENT COMPANY DID SEEK BY MEANS OF THREATS TO COMPEL FLORENTINO C. CORREIA, AN EMPLOYEE OF THE RESPONDENT COMPANY, TO CEASE TO BE A MEMBER OF THE APPLICANT TRADE UNION ON FEBRUARY 24TH, 1969 AND MARCH 7TH, 1969 AT METROPOLITAN TORONTO, CONTRARY TO THE PROVISIONS OF SECTION 50(C) OF THE LABOUR RELATIONS ACT.

- (c) THAT THE RESPONDENTS FAGA FORMS LIMITED AND ANTONIO FONTANO DID SEEK BY INTIMIDATION OR COERCION TO COMPEL FLORENTINO C. CORREIA TO CEASE TO BE A MEMBER OF THE APPLICANT TRADE UNION ON FEBRUARY 24TH, 1969 AND MARCH 7TH, 1969 AT METROPOLITAN TORONTO, CONTRARY TO SECTION 52 OF THE LABOUR RELATIONS ACT.

4. THE APPROPRIATE DOCUMENTS WILL ISSUE.

15816-68-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) v. FAGA FORMS LIMITED AND ANTONIO FONTANA (RESPONDENTS).

BEFORE: J.D. O'SHEA, VICE-CHAIRMAN AND BOARD MEMBERS P.J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: R. KOSKIE AND A. NEIL FOR THE APPLICANT, J.B. SANDERSON AND F.R. VON VEH FOR THE RESPONDENTS.

DECISION OF THE BOARD: MARCH 24, 1969.

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION OF THE RESPONDENTS FOR OFFENCES ALLEGED TO HAVE BEEN COMMITTED UNDER THE LABOUR RELATIONS ACT.

2. THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENTS FAGA FORMS LIMITED AND ANTONIO FONTANA FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:

(a) THAT THE RESPONDENT FAGA FORMS LIMITED BEING AN EMPLOYER AND THE RESPONDENT ANTONIO FONTANA BEING A PERSON ACTING ON BEHALF OF THE RESPONDENT COMPANY DID REFUSE, CONTRARY TO SECTION 50(A) OF THE LABOUR RELATIONS ACT, TO CONTINUE TO EMPLOY RINO MASUTTI BECAUSE HE WAS A MEMBER OF THE APPLICANT ON FEBRUARY 28TH, 1969, AT METROPOLITAN TORONTO.

(b) THAT THE RESPONDENT FAGA FORMS LIMITED AND THE RESPONDENT ANTONIO FONTANA BEING A PERSON ACTING ON BEHALF OF THE RESPONDENT COMPANY DID SEEK BY MEANS OF THREATS TO COMPEL RINO MASUTTI, AN EMPLOYEE OF THE RESPONDENT COMPANY, TO CEASE TO BE A MEMBER OF THE APPLICANT TRADE UNION ON FEBRUARY 28TH, 1969 AT METROPOLITAN TORONTO, CONTRARY TO THE PROVISIONS OF SECTION 50(C) OF THE LABOUR RELATIONS ACT.

(c) THAT THE RESPONDENTS FAGA FORMS LIMITED AND ANTONIO FONTANA DID SEEK BY INTIMIDATION OR COERCION TO COMPEL RINO MASUTTI TO CEASE TO BE A MEMBER OF THE APPLICANT TRADE UNION ON FEBRUARY 28TH, 1969 AT METROPOLITAN TORONTO, CONTRARY TO SECTION 52 OF THE LABOUR RELATIONS ACT.

3. THE APPROPRIATE DOCUMENTS WILL ISSUE.

INDEXED ENDORSEMENTS - SECTION 65

15345-68-U: THE AMALGAMATED TRANSIT UNION, DIVISION 741, LONDON, ONTARIO (COMPLAINANT) v. SKINNER SCHOOL BUS LINES LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: HENRY D. MORGAN AND THEO WOLDER FOR THE COMPLAINANT; B.H. STEWART AND BRUCE DODDS FOR THE RESPONDENT.

DECISION OF THE BOARD: MARCH 27, 1969.

• • •

2. THIS IS A COMPLAINT LAUNCHED UNDER THE PROVISIONS OF SECTION 65 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT ALLEGES THAT THAKUR P. SINGH, HARRY BEUKEBOM, JIM F. McCARTY, ALLAN L. WRIGHT, JOHN A. BAXTER, ALLEN R. GREEN, ROGER R. BARNES AND BRIAN K. GLENHOME HAVE BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 3, 48, 50(A) AND (C) OF THE ACT. THE COMPLAINANT SEEKS REINSTATEMENT OF THE ABOVE NAMED PERSONS TOGETHER WITH COMPENSATION FOR ALL LOSS OF EARNINGS. THE AGGRIEVED HAD BEEN EMPLOYED AS MECHANICS.

3. AT THE OPENING OF THE HEARINGS, THE RESPONDENT TOOK THE POSITION THAT THE BOARD SHOULD NOT DEAL WITH THE ALLEGATIONS IN-SOFAR AS THEY RELATE TO THAKUR P. SINGH, ON THE GROUNDS THAT HE HAD BEEN FULLY REINSTATED IN EMPLOYMENT WITH FULL COMPENSATION AND HIS CASE WAS, THEREFORE, SETTLED.

4. THE COMPLAINANT CONTENDED THAT THE INCIDENT OF THAKUR SINGH WAS SO INEXTRICABLY BOUND UP WITH THE ISSUES CONCERNING THE OTHER COMPLAINANTS THAT EVIDENCE SURROUNDING HIS RELATIONSHIP WITH THE RESPONDENT WAS ESSENTIAL TO THE PROPER PRESENTATION AND UNDERSTANDING OF THE WHOLE CASE OF THE COMPLAINANT. IT FURTHER ARGUED THAT THE CASE OF SINGH SHOULD BE REVIEWED BY THE BOARD BECAUSE, IN ITS OPINION, THERE HAD BEEN A CHANGE MADE IN THE CONDITIONS OF RE-EMPLOYMENT OF SINGH SO AS TO MAKE HIS RESTORATION SOMEWHAT MORE CONDITIONAL THAN HE HAD BEEN FIRST GIVEN TO UNDERSTAND.

5. HAVING CONSIDERED THE REPRESENTATIONS OF COUNSEL, THE BOARD DECIDED THAT IT WOULD HEAR THE EVIDENCE OF THAKUR SINGH AND THAT IT WOULD REMAIN OPEN TO THE RESPONDENT TO RAISE THE MATTER OF THE SETTLEMENT BY WAY OF ANSWER TO THE CLAIM MADE ON BEHALF OF SINGH. THE BOARD RESERVED ITS DECISION ON THE QUESTION OF THE ALLEGED POST-SETTLEMENT VIOLATION BY THE RESPONDENT AND EVIDENCE WITH RESPECT THERETO WAS HEARD SUBJECT TO THE RESERVATION.

6. WITH RESPECT TO THE FOREGOING RESERVATION, SECTION 65(6) OF THE ACT DEALS WITH THE QUESTION OF NON-COMPLIANCE WITH THE TERMS OF AN AGREEMENT REACHED IN ACCORDANCE WITH THE CONDITIONS THEREIN SET OUT. THE RECOURSE THEREUNDER WOULD BE TO BRING A FRESH COMPLAINT. IN THE PRESENT CASE, HOWEVER, AS WE UNDERSTAND IT, THE COMPLAINANT SEEKS TO INTRODUCE THE EVIDENCE OF BREACH OF THE TERMS OF RE-EMPLOYMENT, NOT ONLY FOR THE PURPOSE OF ESTABLISHING A FRESH CHARGE AGAINST THE RESPONDENT, BUT ALSO AS EVIDENCE TENDING TO SHOW A LACK OF GOOD FAITH REFLECTING ON THE ISSUE AT LARGE, AT THE TIME THE ALLEGED AGREEMENT WAS MADE. WE ARE OF THE OPINION THAT THE EVIDENCE IS RECEIVABLE FOR THE LATTER PURPOSE, BUT NOT FOR THE PURPOSE OF ESTABLISHING A FRESH VIOLATION OF THE ACT IN THIS CASE.

7. THAKUR P. SINGH, ONE OF THE ALLEGED AGGRIEVED PERSONS WAS DISCHARGED BY THE RESPONDENT AT THE COMMENCEMENT OF HIS SHIFT ON WEDNESDAY, NOVEMBER 13, 1968. THE REASON GIVEN WAS THAT HE WAS NOT PRODUCING ENOUGH.

8. IT WAS ESTABLISHED IN EVIDENCE THAT THAKUR SINGH AND THE OTHER COMPLAINANTS NAMED IN THESE PROCEEDINGS, ATTENDED A UNION MEETING ON NOVEMBER 11, 1968 AND SIGNED UNION CARDS. ON THE FOLLOWING DAY, NOVEMBER 12, JOSEPH GALEA, A FOREMAN, QUESTIONED SINGH, BEUKEBOOM AND OTHERS OF THE COMPLAINANTS WITH RESPECT TO THE UNION AND THEIR CONNECTION WITH IT, AND INDICATED TO THEM THAT ANY UNION ACTIVITY WOULD BE FROWNS UPON BY THE COMPANY. ON THAT SAME DAY, AT ABOUT 5 P.M., ALLEN GREEN, ONE OF THE COMPLAINANTS WAS CALLED INTO THE OFFICE OF DOUGLAS OLIVER, SUPERINTENDENT, AND QUESTIONED AS TO HIS KNOWLEDGE OF THE UNION AND AS TO WHO WERE MEMBERS IN IT.

9. THE FOLLOWING DAY, NOVEMBER 13, 1968, AT THE COMMENCEMENT OF WORK, APPROXIMATELY 7.40 A.M., DOUGLAS OLIVER INFORMED SINGH THAT HE WAS DISCHARGED. THE REASON GIVEN SINGH AT THE TIME WAS THAT HE WAS NOT PRODUCING ENOUGH. WORD OF THE DISCHARGE SPREAD AMONG THE OTHER MECHANICS AS THEY CAME IN TO WORK. NONE OF THEM COMMENCED TO WORK, BUT RATHER ALL GATHERED AROUND SINGH'S WORK STATION TO DISCUSS THE MATTER. A SHORT TIME THEREAFTER, ALL THE AGGRIEVED LEFT THE SHOP. THE REASON FOR THEIR DEPARTURE IS A MATTER IN DISPUTE. THE COMPLAINANT CONTENDED THAT THEY WERE DISCHARGED, WHEREAS THE COMPANY MAINTAINED THAT THEY HAD WALKED OFF THE JOB TO PROTEST SINGH'S DISMISSAL.

10. THE GIST OF THE COMPLAINANT'S EVIDENCE IS THAT AS THE AGGRIEVED WERE CONGREGATED ABOUT SINGH THE FOREMAN, JOE GALEA, SAID TO THEM "ARE YOU ALL WITH SINGH?" THEY ALL INDICATED THAT THEY WERE. GALEA IS THEN SAID TO HAVE GONE TO SEE DOUGLAS OLIVER AND, ON HIS RETURN TO THE GROUP, SAID THAT THEY HAD ALL BETTER GO. THIS, THEY SAID, THEY TOOK TO MEAN THAT THEY HAD BEEN DISCHARGED.

11. GALEA'S EVIDENCE IS THAT ONE OF THE AGGRIEVED, BEUKEBOOM, HAD CALLED ALL THE MECHANICS TOGETHER. HE ALLEGES THAT BEUKEBOOM THEN SAID "IF THAKUR IS LET GO, WE WILL ALL GO". GALEA STATED THAT HE THEN ASKED IF THEY WERE GOING TO GO BACK TO WORK AND WAS ADVISED THAT THEY WOULD NOT. HE THEN WENT TO SEE DOUGLAS OLIVER WHO TOLD HIM IF THE MEN WOULDN'T WORK, THERE WAS NOTHING HE COULD DO. GALEA SAYS, HE THEN RETURNED TO THE GROUP AND TOLD THEM IF THEY FELT THAT WAY, THEY COULD ALL GO HOME. HE STATED THAT HE TOLD NO ONE THEY WERE "FIRED". INSOFAR AS THE CASE OF THAT TERM IS CONCERNED, THE AGGRIEVED AT NO TIME STATED THAT THAT PARTICULAR WORD WAS USED BY GALEA OR ANY ONE ELSE IN AUTHORITY.

12. DOUGLAS OLIVER PUT IN AN APPEARANCE AS THE MECHANICS WERE LEAVING. SINGH SAID THAT HE TOLD OLIVER THAT JOE HAD FIRED THEM AND THAT OLIVER SAID NOTHING. THE EVIDENCE OF McCARTY, ONE OF THE AGGRIEVED, LENDS CONSIDERABLE SUPPORT, HOWEVER, TO GALEA'S VERSION OF WHAT HAPPENED. HE TESTIFIED THAT OLIVER ASKED THEM "ARE YOU FELLOWS GOING TO WORK?" HE SAID THAT BEUKEBOOM REPLIED "JOE JUST FIRED US". OLIVER THEN SAID "IF YOU ARE NOT GOING TO WORK, YOU HAD BETTER GO". UNDER CROSS EXAMINATION, McCARTY AGAIN TESTIFIED THAT DOUGLAS OLIVER HAD SAID TO THE MEN "IF YOU ARE NOT GOING TO WORK, YOU BETTER GO". McCARTY ALSO TESTIFIED THAT AT A MEETING HELD THAT DAY WITH CLIFFORD GARSIDE, THE GENERAL MANAGER, THE LATTER HAD COMPLAINED THAT THE MECHANICS HAD LEFT THEM IN AN AWFUL STATE BY WALKING OUT. McCARTY INSISTED TO HIM THAT THEY HAD BEEN FIRED.

13. WHETHER THE CESSION OR WORK ON THE PART OF THE MECHANICS ON NOVEMBER 13, 1968 WAS THE RESULT OF A WALKOUT OR A MASS DISMISSAL, THERE IS NO DISPUTE ABOUT IMMEDIATELY SUBSEQUENT EVENTS. THAT AFTERNOON THE MECHANICS, WHO WERE ACTING AS A GROUP, GOT IN TOUCH WITH THE COMPANY AND ARRANGED FOR A MEETING BETWEEN TWO OF THEIR MEMBERS AND MR. GARSIDE TO DISCUSS THE ISSUE. THEY MET THAT AFTERNOON. THE MEETING WAS SHORT BECAUSE GARSIDE FELT THAT GALEA AND OLIVER SHOULD ATTEND AND THEY WERE NOT AVAILABLE. HE DID INDICATE, HOWEVER, THAT HE WAS QUITE PREPARED TO TAKE BACK SEVEN OF THE MECHANICS, BUT NOT THAKUR SINGH. A FURTHER MEETING WITH McCARTY AND BARNES WAS SET UP FOR 7.30 A.M. THE FOLLOWING DAY. THE RESULT OF THAT MEETING WAS THAT AN OFFER OF REINSTATEMENT WAS MADE WITH FULL PAY TO ALL OF THE AGGRIEVED EXCEPT SINGH. WE SEE NO REASON TO THINK THIS OFFER WAS NOT A GENUINE OFFER. THE AGGRIEVED WERE GIVEN UNTIL 9.30 A.M. TO ACCEPT THE EMPLOYER'S OFFER. THEY TOOK THE POSITION THAT THEY WOULD ONLY

RETURN ON CONDITION THEY RECEIVE CERTAIN GUARANTEES AND ON CONDITION THAT SINGH BE REHIRED. THE CONDITIONS WERE NOT ACCEPTABLE TO THE EMPLOYER; ALL THE EMPLOYEES WERE CONSEQUENTLY NOTIFIED OF THEIR DISMISSAL.

14. IT SEEMS TRITE TO SAY THAT THE AGGRIEVED (WITH THE EXCEPTION OF SINGH) ASSUMING, BUT WITHOUT AT THE MOMENT SO FINDING, THAT THEY HAD ESTABLISHED SOME RIGHT TO RELIEF, EFFECTIVELY CUT THEMSELVES OFF FROM ANY REAL REMEDY BY GIVING THE CONDITIONAL ANSWER TO THE EMPLOYER'S INVITATION TO RETURN TO WORK. THIS WOULD APPEAR TO BE THE CASE WHETHER THEY WALKED OUT, WERE FIRED OR LEFT THE PREMISES UNDER A GENERAL MISUNDERSTANDING AMONG THE PARTIES CONCERNED AT THE TIME. THEY COULD NOT HAVE BEEN PLACED IN ANY BETTER POSITION THAN ACCEPTANCE OF THE OFFER WOULD HAVE LEFT THEM - FOR IT WOULD HAVE AUTOMATICALLY INCLUDED THE RIGHT TO HAVE RECOURSE TO THE PROVISIONS OF THE ACT HAD THE NEED ARisen.

15. IT IS THE DUTY OF A COMPLAINANT IN CASES SUCH AS THIS TO ESTABLISH BY SUBSTANTIAL EVIDENCE THAT THE AGGRIEVED HAVE BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT. IN OUR OPINION, THE BEST THAT CAN BE MADE OF THE EVIDENCE INSOFAR AS THE COMPLAINANT'S CASE IS CONCERNED, IS TO SAY THAT IT LEAVES IN DOUBT THE QUESTION AS TO WHETHER THE AGGRIEVED (EXCEPT SINGH) WERE DISCHARGED BY THE COMPANY OR WALKED OUT OF THEIR OWN ACCORD IN THE MORNING OF NOVEMBER 13, 1968. EVEN IF THAT QUESTION WERE ASSUMED TO HAVE BEEN ANSWERED IN FAVOUR OF THE COMPLAINANT THE EVIDENCE, AGAIN VIEWED AT ITS BEST WITH RESPECT TO THE COMPLAINANT, LEAVES IN DOUBT THE REASON FOR DISCHARGE. THUS, ON THE BEST VIEW OF THE EVIDENCE FROM THE STAND POINT OF THE COMPLAINANT, THERE ARE DOUBTS RAISED WITH RESPECT TO SERIOUS ASPECTS OF THE ALLEGATIONS. SUCH DOUBTS MUST BE RESOLVED IN FAVOUR OF THE RESPONDENT.

16. IN OUR OPINION, HOWEVER, THERE IS SUFFICIENT EVIDENCE FROM WHICH TO FIND ON THE BALANCE OF PROBABILITIES THAT THE AGGRIEVED WALKED OUT OF THE GARAGE IN SYMPATHY WITH THAKUR SINGH. WE BELIEVE THAT, APART FROM THE OTHER EVIDENCE, THEIR WHOLE COURSE OF CONDUCT, BOTH BEFORE AND AFTER THE WALK-OUT, IS CONSISTENT WITH THIS FINDING. IN PARTICULAR, THEIR CONCERTED REFUSAL TO ACCEPT EMPLOYMENT UNLESS SINGH ALSO RETURNED PROVIDES, IN OUR OPINION, CONFIRMATION OF OUR BELIEF AS TO THEIR INTENT WHEN THEY LEFT THE PREMISES.

17. THERE CAN BE LITTLE DOUBT IN ANYONE'S MIND THAT THE STRONG, IF MISGUIDED, LOYALTY SHOWN BY THE AGGRIEVED WHO WALKED OUT IN SYMPATHY WITH HIM WAS AROUSED BY THEIR CONVICTION THAT THAKUR SINGH HAD BEEN DISCHARGED FOR JOINING THE UNION. THERE WAS AMPLE AND COMPELLING EVIDENCE TO DRIVE THEM TO THAT CONCLUSION. IT IS BEYOND DISPUTE, OF COURSE, THAT IF SINGH HAD NOT

BEEN DISCHARGED, THIS WHOLE UNFORTUNATE INCIDENT WOULD NOT HAVE ARISEN. TO SAY THAT, OF COURSE, IS NOT TO JUSTIFY THE STEPS THE AGGRIEVED TOOK IN AN ATTEMPT TO RIGHT WHAT THEY HAD EVERY REASON TO BELIEVE WAS WRONG.

18. SINGH WAS REINSTATED BY THE EMPLOYER SOMETIME AFTER THE OTHERS HAD MADE THEIR ELECTION NOT TO RETURN TO WORK WITHOUT HIM. HIS RESTORATION WAS MADE ON ADVICE OF COUNSEL AND, AS WAS INDICATED EARLIER, INVOLVED FULL RESTORATION AND PAYMENT OF WAGES LOST. INSO FAR AS HE IS CONCERNED, THE BOARD WOULD NOT HAVE IMPROVED UPON THESE TERMS. AS WE HAVE ALREADY INDICATED, THE COMPLAINANT SOUGHT TO RE-OPEN THE QUESTION OF THE SETTLEMENT UPON AN ALLEGATION OF ITS BREACH AND WE DECLINED TO ENTERTAIN THAT COMPLAINT AS PART OF THIS ISSUE. WE CAN ONLY ADD THAT EVEN IF WE HAD DECIDED IT WAS PROPER TO HEAR THE CHARGE WITH RESPECT TO THE BREACH, WE COULD NOT, ON THE EVIDENCE BEFORE US, HAVE GRANTED ANY SUBSTANTIAL RELIEF SINCE SINGH ELECTED TO QUIT THE JOB ALTHOUGH, IN OUR OPINION, THE CHANGE ALLEGED, IF PROVEN, WOULD NOT HAVE BEEN SO ONEROUS AS TO COMPEL ANY REASONABLE PERSON TO DO SO.

19. HAVING REGARD TO ALL OF THE EVIDENCE, WE FIND THAT IT DOES NOT SATISFY US THAT THE RESPONDENT DEALT WITH HARRY BEUKEBOMM, JIM F. McCARTY, ALLAN L. WRIGHT, JOHN A. BAXTER, ALLEN R. GREEN, ROGER R. BARNES AND BRIAN K. GLANHOLME CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT, AND THE COMPLAINT INSO FAR AS THEY ARE CONCERNED IS DISMISSED.

20. IN THE GENERAL INTEREST OF PROMOTING SETTLEMENT BETWEEN PARTIES IN MATTERS ARISING UNDER SECTION 65 AND, IN THIS CASE, IN VIEW OF THE FACT OF HIS REINSTATEMENT WITH FULL WAGES, WE MAKE NO FORMAL DECLARATION WITH RESPECT TO THE CONDUCT OF THE COMPANY AS IT Affected SINGH, AND THE PROCEEDINGS INSO FAR AS HE IS CONCERNED ARE HEREBY TERMINATED.

21. THE DECISION OF THE BOARD WAS ARRIVED AT WITHOUT REFERENCE TO THE DISPUTED EVIDENCE TENDERED BY THE RESPONDENT THROUGH THE WITNESS DODDS.

15424-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. THE CEMENTATION COMPANY (CANADA) LIMITED (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS P.J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: L. INGLE, H. GAREAU FOR THE COMPLAINANT, C.A. MORLEY, W.W. WALKER FOR THE RESPONDENT.

DECISION OF O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBER
P.J. O'KEEFFE; BOARD MEMBER J.E.C. ROBINSON DISSENTING
IN PART: MARCH 24, 1969.

1. IN NOVEMBER 1968 THE RESPONDENT WAS SINKING A MINE SHAFT IN SHEBANDOWAN, ONTARIO. THE INITIAL STAGE OF SINKING A MINE SHAFT INVOLVES CONSTRUCTION OF TEMPORARY EQUIPMENT AND PREPARATORY SURFACE WORK. WHEN THE INITIAL STAGE IS COMPLETED A SECOND IS COMMENCED ON THE SHAFT PROPER AND INVOLVES MORE SKILLED WORK IN A LIMITED AREA. THE RESPONDENT ON OR ABOUT DECEMBER 1ST, 1969 HAD REACHED THE SECOND STAGE OF ITS OPERATIONS.
2. ON NOVEMBER 28TH AND 29TH THE RESPONDENT LAID OFF MR. STACEY AND MR. MEANY WHO WERE MEMBERS OF THE COMPLAINANT UNION. THE COMPLAINANT ACCORDINGLY BROUGHT THIS APPLICATION PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT, ALLEGING ON BEHALF OF MR. STACEY AND MR. MEANY THAT THEY WERE DISCHARGED BECAUSE OF UNION ACTIVITY.
3. MR. STACEY WHO HAD BEEN HIRED AS A WELDER MECHANIC IN SEPTEMBER 1968, JOINED THE UNION ON NOVEMBER 18TH, 1968 AND ENGAGED IN ORGANIZATIONAL ACTIVITIES ON ITS BEHALF ON NOVEMBER 26TH AND 27TH. HIS EMPLOYMENT WAS TERMINATED ON NOVEMBER 28TH, 1968.
4. MR. ALDEE MARCOTTE WAS HIRED AS A MAINTENANCE MECHANIC ON OR ABOUT DECEMBER 4TH, 1968. HIS EVIDENCE INDICATED THAT HE APPROACHED MR. GAETON PIDGEON A SUPERVISOR EMPLOYED BY THE RESPONDENT AND ASKED IF THE RESPONDENT NEEDED A WELDER. HE THEN PERFORMED A WELDING TEST FOR MR. PIDGEON AND MR. COOPER, THE MASTER MECHANIC, AND WAS HIRED. HE IS PRESENTLY PERFORMING WORK WHICH INVOLVES BOTH WELDING AND MECHANIC'S WORK. DURING THE COURSE OF MR. MARCOTTE'S INTERVIEW HE WAS ASKED BY MR. PIDGEON WHETHER OR NOT HE BELONGED TO THE UNION AND THEN MR. PIDGEON STATED "THE WELDER I HAD BEFORE WAS A GOOD WELDER AND HE BELONGED TO THE UNION; AND HE TRIED TO ORGANIZE THE UNION SO WE LAID HIM OFF." MR. PIDGEON WAS NOT CALLED TO TESTIFY ON BEHALF OF THE RESPONDENT THUS MR. MARCOTTE'S EVIDENCE IS UNCONTRADICTED.
5. MR. WALKER, TESTIFYING ON BEHALF OF THE RESPONDENT, STATED THAT MR. STACEY WAS LAID OFF BECAUSE THE PROJECT HAD REACHED THE SECOND STAGE, THAT THERE WAS AN ATTEMPT TO CUT COSTS, AND THAT ALTHOUGH MR. STACEY WAS CONSIDERED AS A MECHANIC HIS QUALIFICATIONS DID NOT SUIT THE RESPONDENT'S TYPE OF WORK.
6. NOTWITHSTANDING THE EXPLANATION ADVANCED BY MR. WALKER, WE FIND THAT THE RESPONDENT HAS NOT SUFFICIENTLY ANSWERED THE CASE PUT FORTH BY THE COMPLAINANT - ESPECIALLY THE UNCONTRADICTED EVIDENCE OF MR. MARCOTTE. THE STATEMENTS MADE BY MR. PIDGEON, A RESPONSIBLE COMPANY OFFICIAL, DEMAND SOME EXPLANATION. HAVING

REGARD TO BOTH THE EVIDENCE OF MR. WALKER AND MR. MARCOTTE, THE RESPONDENT'S BEST POSITION IN THIS MATTER IS THAT IT HAD MIXED MOTIVES IN DISCHARGING MR. STACEY. WHERE THERE IS A DISCHARGE IN WHICH UNION MEMBERSHIP IS ONE OF THE CONSIDERATIONS, IT IS A VIOLATION OF THE LABOUR RELATIONS ACT.

7. IN ADDITION, IT WAS WITHIN THE RESPONDENT'S POWER TO PRODUCE MR. PIDGEON TO EXPLAIN THE CIRCUMSTANCES SURROUNDING HIS STATEMENTS. IF THE RESPONDENT DOES NOT EXPLAIN ITS FAILURE TO PRODUCE MR. PIDGEON THE INFERENCE MAY BE DRAWN THAT THE UNPRODUCED EVIDENCE WOULD BE UNFAVOURABLE TO THE RESPONDENT.

MURRAY V. SASKATOON (1952) 2 D.L.R. 499; BUSUTTIL V. DIAMOND T TRUCKS (TORONTO) LTD. ET AL (1969) 2 D.L.R. (3d) 167 at 162, (1969) 1 O.R. 245 at 246. ACCORDINGLY, AND HAVING REGARD TO THE EVIDENCE, WE FIND THAT THE RESPONDENT HAS VIOLATED SECTION 50(A) OF THE LABOUR RELATIONS ACT WITH RESPECT TO MR. STACEY. HAVING REGARD TO THE AGREEMENT OF THE PARTIES WITH RESPECT TO THE PERIOD OF COMPENSATION WE DETERMINE

(a) THAT THE RESPONDENT SHALL FORTHWITH REINSTATE AND RE-EMPLOY MR. STACEY IN THE SAME OR LIKE EMPLOYMENT AS HE HAD AT THE DATE OF HIS DISCHARGE

(b) AS COMPENSATION FOR LOSS OF WAGES AND EMPLOYMENT BENEFITS FROM THE DATE OF DISCHARGE UNTIL JANUARY 31st, 1969, THE RESPONDENT SHALL FORTHWITH PAY TO MR. STACEY THE SUM OF \$500.00.

8. ON OCTOBER 1st, 1968 MR. MEANY WAS HIRED AS A SURFACE LABOURER, WITH PREVIOUS MINING EXPERIENCE BUT NO PREVIOUS SHAFTING EXPERIENCE. HE JOINED THE UNION ON NOVEMBER 27th, 1968 AND HIS EMPLOYMENT WAS TERMINATED ON NOVEMBER 29th, 1968.

9. THE ONUS OF ESTABLISHING A COMPLAINT RESTS WITH THE COMPLAINANT IN APPLICATIONS UNDER SECTION 65 OF THE LABOUR RELATIONS ACT. MERE SUSPICION IS NOT SUFFICIENT. WE RECOGNIZE THE DIFFICULTIES THAT EMPLOYEES MAY HAVE IN OBTAINING THE REAL REASONS FOR THEIR DISMISSAL, BUT NOTWITHSTANDING THESE DIFFICULTIES, SURFACE EXPLANATIONS FOR TERMINATION WHICH ARE FABRICATED BECOME READILY TRANSPARENT. THE BOARD, HOWEVER, MUST BE CAREFUL THAT ELEMENTS OF SUSPICION ARE NOT ELEVATED TO AFFIRMATIVE FACTS SUFFICIENT TO SATISFY THE ONUS REQUIRED.

10. THERE ARE A NUMBER OF FACTORS IN THIS CASE THAT RAISE SUSPICION AND IT BECOMES NECESSARY THAT THEY BE ASSESSED.

FIRST, ARE THE CIRCUMSTANCES OF HIRING. MR. MEANY HAD BEEN HIRED BY MR. PIDGEON AS A SURFACE LABOURER WITH MINING EXPERIENCE, BUT NO SHAFTING EXPERIENCE. HE WAS TOLD THAT "EXPERIENCE WASN'T A REAL NECESSITY." IN CROSS-EXAMINATION HE STATED THAT HE WAS HIRED AS A SURFACE LABOURER AND THAT WHEN THE SECOND STAGE COMMENCED HE WOULD GO INTO THE SHAFT OR "GET A TRY AT IT ANYWAY." HOWEVER, HE ALSO STATED THAT MR. PIDGEON SAID ON HIRING, "WE'LL TRY AND WORK UNTRAINED PEOPLE IN WHEN THE RESPONDENT GETS TO THE SINKING STAGE." AT THE TIME MR. MEANY WAS DISMISSED THERE WERE OTHER TRAINED EMPLOYEES (PRESUMABLY WITH SHAFT EXPERIENCE) WORKING ON THE PROJECT. HAVING REGARD TO ALL THE EVIDENCE WITH RESPECT TO MR. MEANY WE FIND THAT HE WAS NOT GUARANTEED EMPLOYMENT IN THE SHAFT CREW BUT THAT IN ALL PROBABILITY HE WAS TOLD THAT HE WOULD BE GIVEN AN OPPORTUNITY AT THE SHAFT STAGE, WITH THE IMPLICATION THAT HE WOULD BE TRAINED FOR SHAFT WORK IF THERE WERE NO OTHER TRAINED PEOPLE AVAILABLE. WE NOTE THAT ANOTHER PERSON EMPLOYED AS A SURFACE LABOURER WAS LAID OFF THE DAY PRIOR TO MR. MEANY'S LAY OFF.

11. SECONDLY, IT IS ALLEGED THAT MR. PIDGEON, THE SUPERVISOR, HAD SEEN MR. MEANY TALKING TO MR. GAREAU, A DISTRICT REPRESENTATIVE OF THE UNION. MR. MEANY WAS NOT CERTAIN AS TO THE DATE OF THIS OCCURRENCE, AND WHILE THE COMPLAINT FILED INDICATES THAT IT TOOK PLACE ON OCTOBER 25TH, MR. MEANY TESTIFIED THAT THE CONVERSATION WITH MR. GAREAU OCCURRED IN NOVEMBER, WITHOUT GIVING ANY SPECIFIC DATE. HAVING REGARD TO THE PLEADINGS AND THE EVIDENCE WE FIND THAT THE INCIDENT TOOK PLACE IN EARLY NOVEMBER AND THAT MR. MEANY'S EMPLOYMENT WAS CONTINUED FOR SOME WEEKS AFTER THAT INCIDENT.

12. IN ADDITION, THE COMPLAINANT SOUGHT TO RELY ON AN EXPRESSION OF ANTI UNION SENTIMENT BY MR. PIDGEON IN OCTOBER, A FEW WEEKS PRIOR TO MR. PIDGEON'S OBSERVING MR. MEANY TALKING TO MR. GAREAU. IF ALL THESE EVENTS HAD OCCURRED IN A DIFFERENT ORDER, FOR EXAMPLE HAD MR. MEANY BEEN OBSERVED IN CONVERSATION WITH MR. GAREAU, IMMEDIATELY FOLLOWED BY AN EXPRESSION OF ANTI UNION SENTIMENT, AND THEN A SUDDEN TERMINATION OF EMPLOYMENT, THE TOTAL EFFECT MIGHT HAVE CREATED MORE THAN A SUSPICION; BUT ALL THESE FACTORS OCCURRING IN THE SEQUENCE THAT THEY DID CREATED ONLY A SUSPICION, AND ARE NOT BY THEMSELVES CONCLUSIVE OF TERMINATION FOR UNION ACTIVITY.

13. ANOTHER FACTOR TO BE CONSIDERED IS THE CIRCUMSTANCE OF TERMINATION. MR. MEANY WAS TOLD AT THE TIME OF HIS DISMISSAL BY THE FOREMAN THAT HE WAS LAID OFF AND THAT IF HE WANTED TO KNOW THE REASON HE SHOULD SEE MR. WALKER THE PROJECT SUPERVISOR. HE IMMEDIATELY SAW MR. WALKER WHO GAVE HIM HIS PAY AND TOLD HIM IT WAS NOT HIS WORK BUT THAT OTHER PEOPLE WERE BEING LAID OFF.

THERE WERE OTHER PERSONS LAID OFF AND, AS STATED, ANOTHER SURFACE LABOURER HAD BEEN TERMINATED THE PREVIOUS DAY. ALTHOUGH MR. MEANY WAS NOT GIVEN AN EXPLANATION BY HIS FOREMAN HE WAS IN FACT GIVEN AN IMMEDIATE EXPLANATION BY THE PROJECT SUPERVISOR WHICH UNDER THE CIRCUMSTANCES IS CREDIBLE.

14. THE LAST FACTOR TO BE CONSIDERED IS THE EFFECT OF OUR FINDING THAT MR. STACEY'S EMPLOYMENT WAS IMPROPERLY TERMINATED. IT MAY BE THAT THE CIRCUMSTANCES OF ONE EMPLOYEE BEING IMPROPERLY TERMINATED FOR UNION ACTIVITY HAVE A CONTAGIOUS INFLUENCE SO AS TO INFECT THE CIRCUMSTANCES SURROUNDING THE DISCHARGE OF OTHER EMPLOYEES. IN THE INSTANT CASE OTHER LAYOFFS UNRELATED TO UNION ACTIVITY OCCURRED AT THE SAME TIME. THE COMPLAINT MAY THEREFORE FALL INTO EITHER OF TWO CATEGORIES, THOSE DISCHARGED FOR UNION ACTIVITY AND THOSE DISCHARGED FOR OTHER REASONS. HAVING REGARD TO THE EVIDENCE WE DO NOT THINK IT SUFFICIENT TO PLACE THE COMPLAINANT IN THE FORMER AS OPPOSED TO THE LATTER CATEGORY. HAD THE TWO EMPLOYEES BEEN THE ONLY ONES DISCHARGED COINCIDENTAL WITH UNION ACTIVITY THEN THE EVIDENCE RELATING TO MR. STACEY MIGHT BE RELEVANT IN ASSESSING THE DISCHARGE OF MR. MEANY. THIS IS NOT THE SITUATION IN THE INSTANT CASE, AND THE COMPLAINANT HAS THEREFORE NOT SATISFIED THE ONUS REQUIRED.

15. ACCORDINGLY THE COMPLAINT WITH RESPECT TO MR. MEANY IS DISMISSED.

DECISION OF BOARD MEMBER J.E.C. ROBINSON:

MARCH 24, 1969.

WHILE I AM IN AGREEMENT THAT THE APPLICATION AS IT PERTAINS TO THE COMPLAINANT MEANY SHOULD BE DISMISSED, I DO NOT NECESSARILY ADOPT THE SAME REASONING AS DOES THE MAJORITY, IN COMING TO THAT FINDING.

WITH RESPECT TO THE APPLICATION AS IT PERTAINS TO THE COMPLAINANT, STACEY, I DISSENT FROM THE FINDING MADE BY THE MAJORITY ORDERING HIS REINSTATEMENT AS WELL AS PAYMENT BY THE COMPANY OF THE DAMAGES SUSTAINED BY HIM.

THE EVIDENCE PRESENTED BY THE COMPANY CONSISTED OF THE TESTIMONY OF WILLIAM WALKER, THE PROJECT MANAGER OF THIS PROJECT.

WALKER TOLD THE BOARD THAT THE COMPANY CONTRACT WAS DIVIDED INTO SEVERAL STAGES. THE FIRST STAGE IN THE PROJECT CONSISTED OF SURFACE WORK READYING TO SINK ITS SHAFT. WHILE DOING THE SURFACE WORK, THE COMPANY HIRED AND USED THE SERVICES OF VARIOUS CRAFTSMEN (INCLUDING WELDERS) AS WELL AS UNSKILLED LABOURERS. DURING THIS STAGE, STACEY WAS EMPLOYED AS A WELDER.

THE EVIDENCE OF WALKER WAS FURTHER THAT WHEN THE PROJECT REACHED THE NEXT TRANSITIONAL STAGE (THE SINKING OF THE SHAFT), THE COMPANY HAD NO NEED FOR A PERSON IN THE CATEGORY OF A WELDER, NOR DID IT NEED SOME OF THE UNSKILLED LABOURERS WHO WERE EMPLOYED DURING THE FIRST STAGE OF THE PROJECT. THE NEED DURING THE SECOND STAGE WAS FOR EMPLOYEES SKILLED IN THE ART OF SHAFT SINKING, ESPECIALLY BECAUSE OF THE CONFINED WORKING AREA ENCOUNTERED DURING THE SINKING OF THE SHAFT.

THE FIRST STAGE OF THE PROJECT FOR WHICH STACEY WAS HIRED, WAS COMPLETED DURING THE LAST WEEK IN NOVEMBER, 1968 AND THE TRANSITION INTO THE SECOND STAGE WAS COMMENCING AROUND THE BEGINNING OF DECEMBER, 1968.

IT IS INTERESTING TO NOTE THAT DURING THE LAST WEEK OF THE TRANSITION FROM THE FIRST TO THE SECOND STAGE, THE COMPANY REDUCED ITS WORK FORCE BY SEVEN PERSONS, INCLUDING THE 2 COMPLAINANTS IN THIS APPLICATION. IT IS SIGNIFICANT TO NOTE THAT THE UNION SAW FIT TO PROCESS ONLY THE APPLICATION OF TWO OF THESE PERSONS.

THE COMPLAINANT, STACEY, WAS ENGAGED AS A WELDER. THE TESTIMONY OF WALKER WAS THAT IN THE SECOND STAGE OF THE PROJECT, THE COMPANY HAD NO NEED FOR FULL TIME WELDERS AND THAT ANY WELDING NECESSARY TO BE DONE COULD BE COMPLETED BY THE SHIFT MECHANICS. AGAIN, IT IS SIGNIFICANT TO NOTE THAT ONE, A. SCOPLE, WHO HAD A TOTAL OF SIX YEARS EXPERIENCE WITH THE COMPANY BOTH IN ONTARIO AND IN SASKATCHEWAN, AND WHO WAS HIRED BY THE COMPANY AS A WELDER ON NOVEMBER 6TH, 1968 DURING THE 1ST STAGE OF THE PROJECT, WAS ALSO LAID OFF DURING THE LAST WEEK IN NOVEMBER BECAUSE THERE WAS NOT SUFFICIENT WELDING WORK TO BE DONE WHEN THE COMPANY ADVANCED INTO THE SECOND STAGE OF ITS OPERATION. ACCORDINGLY, OF THE TWO WELDERS HIRED DURING THE FIRST STAGE, BOTH WERE LAID OFF WHEN THE PROJECT PROCEEDED TO THE 2ND STAGE. OF THE TWO ONLY STACEY WAS THE SUBJECT OF A COMPLAINT.

THE TESTIMONY OF WALKER WAS THAT HE WAS THE ONE WHO DETERMINED THE LAY OFF OF STACEY. IT WAS HIS DECISION AND HE EXERCISED IT FOR SOUND BUSINESS REASONS.

I FIND THAT HIS TESTIMONY WAS CREDIBLE AND HIS EXPLANATION CONSISTENT WITH THE CIRCUMSTANCES ENCOUNTERED IN THE PROJECT. INDEED, IT IS ALSO CONSISTENT WITH THE BOARD'S POLICY IN CERTIFICATION CASES OF SUCH PROJECTS, TO DIVIDE THE PROJECT INTO THREE DISTINCT STAGES FOR PURPOSES OF CERTIFICATION.

I MUST SAY ALSO, THAT I AM BAFFLED THAT THE MAJORITY WOULD REINSTATE A MAN TO A POSITION WHICH NOW REPRESENTS A NON-EXISTENT CATEGORY.

IN ALL OF THE CIRCUMSTANCES, THEREFORE, I HAVE NO HESITATION IN DISMISSING THE APPLICATION AS IT PERTAINS TO STACEY.

15752-68-U: GERALD O'NEILL (COMPLAINANT) V. ARGO CONSTRUCTION LIMITED AND RONALD ROBILLARD (RESPONDENTS).

BEFORE: G.W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

DECISION OF THE BOARD: MARCH 21, 1969.

• • •

2. THIS IS A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT, WHO IS ALSO THE AGGRIEVED PERSON, COMPLAINS THAT HE WAS DISCHARGED BECAUSE OF HIS UNION ACTIVITY. THE POSITION OF THE RESPONDENTS IS THAT THE COMPLAINANT WAS LAID OFF BECAUSE OF HIS NON-PRODUCTIVENESS.

3. IT APPEARS FROM THE REPORT OF THE FIELD OFFICER THAT THE RESPONDENT COMPANY IS PARTY TO A COLLECTIVE AGREEMENT WITH LOCAL UNION 93 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA. THIS AGREEMENT REMAINS IN EFFECT UNTIL APRIL 30, 1969. THE AGREEMENT CONTAINS A GRIEVANCE PROCEDURE CULMINATING, WHERE NECESSARY, WITH FINAL AND BINDING ARBITRATION. ARTICLE V OF THE SAID AGREEMENT PROVIDES THAT IT IS THE EXCLUSIVE FUNCTION OF THE EMPLOYER, INTER ALIA, TO LAY OFF AND DISCHARGE EMPLOYEES IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT. THE SAID ARTICLE ALSO PROVIDES THAT THE UNION HAS RECOURSE THROUGH THE GRIEVANCE PROCEDURE "IF IT FEELS THAT THE EMPLOYER HAS EXERCISED THIS FUNCTION CONTRARY TO THE TERMS OF THE AGREEMENT". THE COMPLAINANT'S POSITION IS THAT IT WAS THE "ANTI-UNION OUTLOOK" OF THE RESPONDENTS AND NOT HIS NON-PRODUCTIVENESS WHICH RESULTED IN HIS LAY-OFF OR DISCHARGE. IT WOULD SEEM CLEAR, THEREFORE, THAT THE COMPLAINANT OR LOCAL UNION 93 HAD THE RIGHT TO GRIEVE WITH RESPECT TO THE LAY-OFF OR DISCHARGE. HOWEVER, THE COMPLAINANT DID NOT FILE A GRIEVANCE WITH THE UNION AND STATES THAT HE DOES NOT INTEND TO DO SO.

4. IN THE HEIST INDUSTRIAL SERVICES CASE, 63 C.L.L.C. PARAGRAPH 16,263, THE BOARD QUOTED FROM AN EARLIER DECISION, DOMINION STORES LIMITED (BOARD FILE No. 2858-61-U) AS FOLLOWS:

IN THE NATIONAL SHOWCASE COMPANY CASE, (1960) CCH CANADIAN LABOUR LAW REPORTS, 16,185, C.L.S. 76-715, THE BOARD HELD THAT WHERE A COMPLAINT RAISES THE ISSUE THAT A PERSON HAS BEEN DISCHARGED CONTRARY TO THE PROVISIONS OF A COLLECTIVE AGREEMENT, THE

MATTER IS ONE TO BE DEALT WITH UNDER THE TERMS OF THE COLLECTIVE AGREEMENT AND NOT BY MEANS OF A HEARING BY THE BOARD UNDER SECTION 65 OF THE ACT. THE COMPLAINANT IN THIS CASE APPEARS TO BE DISSATISFIED WITH THE DISPOSITION OF HIS CASE BY THE TRADE UNION WHICH WAS HIS BARGAINING AGENT. AS THE BOARD HELD IN THE WALLACE BARNES COMPANY CASE, (1961) CCH CANADIAN LABOUR LAW REPORTS, 16,198, C.L.S. 76-742, WHERE EMPLOYEES HAVE CHOSEN A BARGAINING AGENT TO ACT ON THEIR BEHALF, THEY ARE BOUND BY ITS ACTIONS AND, IF A COLLECTIVE AGREEMENT EXISTS, BY THE TERMS OF THAT AGREEMENT. AN EMPLOYEE IN THESE CIRCUMSTANCES MUST SEEK RELIEF UNDER THE AGREEMENT AND NOT BY AN APPLICATION TO THIS BOARD.

THIS PRINCIPLE APPLIES EVEN THOUGH NO ACTION HAS BEEN TAKEN UNDER THE TERMS OF THE COLLECTIVE AGREEMENT. SEE, FOR EXAMPLE, THE ONTARIO HYDRO CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY 1961, p. 416, WHERE THE BOARD SAID:

IT IS ADMITTED BY THE COMPLAINANT IN HIS SIGNED STATEMENT TO THE FIELD OFFICER, THAT HE HAS MADE NO ATTEMPT TO INVOKE THE GRIEVANCE PROCEDURE, ALTHOUGH IT WOULD APPEAR THAT HIS COMPLAINT WAS ONE WHICH MIGHT PROPERLY HAVE BEEN THE SUBJECT OF A GRIEVANCE.

IN THE CIRCUMSTANCES, THE CASE FALLS SQUARELY WITHIN THE NATIONAL SHOWCASE Co. LTD. CASE, FILE No. 215-60-U, AND THE COMPLAINT IS ACCORDINGLY DISMISSED.

5. THE PRESENT COMPLAINT APPEARS TO FALL SQUARELY WITHIN THE ABOVE WELL-ESTABLISHED POLICIES AND SHOULD THEREFORE BE DISMISSED. IF EVENTUALLY AN ARBITRATION BOARD SHOULD DECIDE THAT THE COLLECTIVE AGREEMENT AFFORDS NO REMEDY TO THE COMPLAINANT, THEN IT WOULD BE OPEN TO HIM TO MAKE ANOTHER COMPLAINT TO THE BOARD.

6. IN THE RESULT, THE COMPLAINT IS HEREBY DISMISSED.

INDEXED ENDORSEMENT - SECTION 33(2)

15562-68-M: MOTOR WHEEL CORPORATION OF CANADA LTD. (APPLICANT) v.
THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA (U.A.W. - A.F.L. - C.I.O.) AND ITS LOCAL
127 (RESPONDENT).

BEFORE: H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS P.J. O'KEEFFE
AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: JAMES N. BARTLET, Q.C., JAMES E. GLASGOW
FOR THE APPLICANT, T.E. ARMSTRONG, H. BARBER FOR THE RESPONDENT.

DECISION OF THE BOARD: MARCH 17, 1969.

1. THE APPLICANT HAS APPLIED FOR RELIEF UNDER SECTION 33(2)
OF THE LABOUR RELATIONS ACT AND REQUESTS THE BOARD TO ADD TO THE
SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE PARTIES A CLAUSE THAT
THERE SHALL BE NO STRIKES OR LOCKOUTS. THE COLLECTIVE AGREEMENT
IS DATED MAY 8TH, 1967 AND REMAINS IN EFFECT UNTIL MAY 8TH, 1969.

2. SECTION 33 OF THE ACT IS AS FOLLOWS:

(1) EVERY COLLECTIVE AGREEMENT SHALL PROVIDE THAT
THERE WILL BE NO STRIKE OR LOCK-OUTS SO LONG AS
THE AGREEMENT CONTINUES TO OPERATE.

(2) IF A COLLECTIVE AGREEMENT DOES NOT CONTAIN
SUCH A PROVISION AS IS MENTIONED IN SUBSECTION
1, IT MAY BE ADDED TO THE AGREEMENT AT ANY TIME
BY THE BOARD UPON THE APPLICATION OF EITHER PARTY.

THE CLAUSE IN THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES DEALING
WITH STRIKES AND LOCKOUTS IS AS FOLLOWS:

12. THE UNION AGREES IT WILL NOT COUNSEL OR
AUTHORIZE ANY STRIKE DURING THE LIFETIME OF
THIS AGREEMENT AND THE COMPANY AGREES THAT
THERE WILL BE NO LOCKOUT DURING THE TERM OF
THIS COLLECTIVE AGREEMENT. IT IS UNDERSTOOD
THAT THE TERMS "STRIKE" AND "LOCKOUT" HAVE
THE MEANINGS CONTAINED IN THE DEFINITION OF
SUCH TERMS IN THE ONTARIO LABOUR RELATIONS
ACT.

3. IT IS SUBMITTED BY THE APPLICANT THAT THE CLAUSE USED IN
THE COLLECTIVE AGREEMENT DOES NOT COMPLY WITH SECTION 33(1) OF THE
ACT AS IT DOES NOT PROVIDE THAT THERE SHALL BE NO STRIKES OR LOCK-
OUTS AND SUGGESTS FOR THE PURPOSES OF THIS SECTION OF THE ACT SUB-

STANTIAL COMPLIANCE IS NOT SUFFICIENT. THE APPLICANT FURTHER SUBMITS THAT IF THE ABOVE IS FOUND BY THE BOARD THEN THE BOARD MUST EXERCISE ITS AUTHORITY UNDER SECTION 33(2) TO ADD THE PROPER CLAUSE, THE WORD "MAY" USED IN THAT SECTION SHOULD BE READ AS "MUST". THE UNION SUBMITS THAT THE PARTIES HAVE CONSIDERED THIS PROBLEM DURING NEGOTIATIONS WHICH RESULTED IN THE CURRENT CLAUSE SET OUT ABOVE AND THEREFORE THE APPLICANT IS ESTOPPED FROM MAKING THIS APPLICATION TO AFFORD IT GREATER PROTECTION; THAT THE APPLICANT HAS IN THE WORDING OF THE CURRENT CLAUSE OBTAINED THE MAXIMUM PROTECTION FOR UNLAWFUL WALK-OUTS; THAT THE APPLICANT IS ATTEMPTING TO AUGMENT A PRIVATE REMEDY AGAINST THE RESPONDENT TO RECOVER DAMAGES.

4. THE PLAIN MEANING OF SECTION 33(2) OF THE ACT PRESUPPOSES A COLLECTIVE AGREEMENT BETWEEN THE PARTIES AND PROVIDES THAT EITHER OF WHICH MAY APPLY TO THE BOARD IN THIS REGARD. WE CANNOT THEREFORE AGREE THAT THE DOCTRINE OF ESTOPPEL HAS ANY APPLICATION WITH RESPECT TO THE EXERCISING OF THE PROVISIONS OF THIS SECTION AS IT WOULD OTHERWISE RENDER HIS PROVISION MEANINGLESS. THE LEGISLATURE HAS DIRECTED THAT EVERY COLLECTIVE AGREEMENT SHALL CONTAIN "A NO STRIKE OR LOCK-OUT CLAUSE" AND IN THE ABSENCE OF WHICH IN SUCH AN AGREEMENT GIVES RISE TO THE RIGHT OF EITHER PARTY TO THAT AGREEMENT TO MAKE AN APPLICATION TO THE BOARD. WE ARE THEREFORE SATISFIED THAT THE APPLICANT IN THIS INSTANCE IS ENTITLED TO MAKE THIS APPLICATION.

5. WE ARE ALSO OF THE OPINION THAT THE BOARD IS NOT CALLED UPON TO CONSIDER THE SUBSEQUENT EFFECTS THAT SUCH A PROVISION MAY HAVE ON THE PARTIES. WHATEVER MAY BE THE BOARD'S DISCRETION UNDER SECTION 33(2) TO ADD THE PROVISION UNDER SECTION 33(1) TO THE COLLECTIVE AGREEMENT WE ARE OF THE OPINION WHERE THE PROVISIONS OF SECTION 33(1) HAVE NOT BEEN MET IN A COLLECTIVE AGREEMENT THE BOARD SHOULD CARRY OUT THE PURPOSE AND INTENT OF THAT SECTION TO ADD SUCH A CLAUSE TO IT. THE BOARD THEN MUST CONSIDER ARTICLE 12 IN THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES SET OUT ABOVE TO DETERMINE WHETHER IT MEETS THE REQUIREMENTS OF THE ACT. WE ARE TOLD THAT DURING NEGOTIATIONS THE FIRST PROPOSAL CONTAINED THE CLAUSE TO THE EFFECT THAT THERE SHALL BE NO STRIKES OR LOCKOUTS WHICH WOULD BE IN ACCORDANCE WITH THE ACT BUT IN A SUBSEQUENT PROPOSAL THIS CLAUSE WAS AMENDED TO THE FORM NOW EMBODIED AS ARTICLE 12 ABOVE. IF THERE IS NO DIFFERENCE IN THE EFFECT OF CLAUSES AS SUGGESTED BY THE RESPONDENT THEN IT IS DIFFICULT TO RECONCILE THE RESPONDENT'S POSITION IN NEGOTIATING A CHANGE TO THE CLAUSE WHICH WOULD COMPLY IN TERMS WITH THE ACT. WE DO NOT, HOWEVER, FIND IT NECESSARY TO DELVE INTO THE PARTIES' PURPOSES OR INTENTIONS IN THIS REGARD AS WE ARE FAR FROM PERSUADED THAT THE EXISTING ARTICLE 12 IN THE COLLECTIVE AGREEMENT SATISFIES THE PRECISE

DIRECTION CONTAINED IN SECTION 33(1) OF THE ACT. ON THIS BASIS WE FIND THAT THE PROVISIONS OF THE ACT HAVE NOT BEEN COMPLIED WITH BY THE PARTIES TO THE COLLECTIVE AGREEMENT.

6. ACCORDINGLY, IN THE EXERCISE OF THE AUTHORITY GIVEN TO IT UNDER SECTION 33(2) OF THE ACT, THE BOARD IS SATISFIED THAT THE APPLICANT IS ENTITLED TO THE RELIEF SOUGHT AND DIRECTS THAT THE FOLLOWING CLAUSE BE ADDED TO THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE PARTIES EFFECTIVE FORTHWITH.

THERE SHALL BE NO STRIKES OR LOCKOUTS SO LONG AS THIS AGREEMENT CONTINUES TO OPERATE.

INDEXED ENDORSEMENT - SECTION 47A

15610-68-M: KENT COUNTY SEPARATE SCHOOL BOARD (APPLICANT) v. BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 210, AFL-CIO-CLC; COMBINED ROMAN CATHOLIC SEPARATE SCHOOLS, WALLACEBURG; THE BOARD OF TRUSTEES OF THE COMBINED ROMAN CATHOLIC SEPARATE SCHOOLS OF TILBURY (RESPONDENTS).

BEFORE: H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS H.F. IRWIN AND O. HODGES.

APPEARANCES AT THE HEARING: K. HANSON, S. CHARBONNEAU, F. VINK, MRS. A. MAILLOUT, R. LAIDLAW FOR THE APPLICANT, M. LEVINSON, LEO PARE FOR THE RESPONDENT.

DECISION OF THE BOARD: MARCH 5, 1969.

1. THE APPLICANT HAS APPLIED FOR RELIEF UNDER SECTION 47A OF THE LABOUR RELATIONS ACT. ON THE FIRST DAY OF JANUARY 1969 ALL OF THE SEPARATE SCHOOL BOARDS IN THE COUNTY OF KENT WERE UNITED TO FORM THE KENT COUNTY SEPARATE SCHOOL BOARD PURSUANT TO PART 3 OF THE SEPARATE SCHOOLS ACT WITH JURISDICTION OVER ALL SEPARATE SCHOOL ZONES IN THE COUNTY OF KENT.

2. AT THE TIME THE APPLICANT CAME INTO EXISTENCE THE RESPONDENT UNION WAS BARGAINING AGENT FOR CERTAIN PERSONS IN WALLACEBURG AND TILBURY WHO BECAME ALONG WITH OTHERS, EMPLOYEES OF THE APPLICANT ON JANUARY 1ST, 1969. IT WAS AGREED BY THE PARTIES THAT THERE WERE 24 EMPLOYEES IN THE BARGAINING UNIT AND THE RESPONDENT UNION REPRESENTS SEVEN OF THESE EMPLOYEES.

3. THE PARTIES AGREED AT THE HEARING THAT ALL THE FORMER SEPARATE SCHOOL BOARDS WERE MUNICIPALITIES AS DEFINED IN THE DEPARTMENT OF MUNICIPAL AFFAIRS ACT AND THE FORMER MUNICIPALITIES WERE ERECTED BY LEGISLATION INTO THE APPLICANT MUNICIPALITY. THE

PARTIES FURTHER AGREED THAT THE PROVISIONS OF SECTION 47A (10) OF THE ACT APPLIED IN THIS CASE.

4. THE BOARD FINDS IN THE CIRCUMSTANCES OF THIS CASE THAT SECTION 47A (10) APPLIES AND THEREFORE THE EMPLOYEES OF THE APPLICANT WITH WHOM WE ARE HERE CONCERNED "ARE DEEMED TO HAVE BEEN INTERMINGLED". ALTHOUGH A SUBSTANTIAL NUMBER OF THE EMPLOYEES HAVE BEEN REPRESENTED BY THE RESPONDENT UNION THE MAJORITY IN THE BARGAINING UNIT HAVE NOT BEEN SO REPRESENTED. IN THESE CIRCUMSTANCES IT IS OUR OPINION THAT A REPRESENTATION VOTE SHOULD BE CONDUCTED TO DETERMINE THE WISHES OF THE EMPLOYEES.

5. ACCORDINGLY, THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE APPLICANT IN THE BARGAINING UNIT HEREINAFTER DESCRIBED: ALL EMPLOYEES OF THE APPLICANT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK ON THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

6. VOTERS WILL BE ASKED TO INDICATE WHETHER THEY WISH TO BARGAIN COLLECTIVELY THROUGH BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION LOCAL 210.

7. THE MATTER IS REFERRED TO THE REGISTRAR.

15684-68-M: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL 647 (APPLICANT) v. MAMMY'S WONDER BAKERIES (A DIVISION OF GENERAL BAKERIES LIMITED) HAMILTON; MAMMY'S WONDER BAKERIES (A DIVISION OF GENERAL BAKERIES LIMITED) ST. CATHARINES; GENERAL BAKERIES LIMITED; GENERAL TRUCK DRIVERS' UNION, LOCAL 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA; RETAIL, WHOLESALE BAKERY & CONFECTIONERY WORKERS' UNION, LOCAL 461, OF THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (RESPONDENTS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS
A. MAIN AND F.W. MURRAY.

APPEARANCES AT THE HEARING: T.E. ARMSTRONG AND S. POWERS FOR THE APPLICANT; R. FILION FOR THE RESPONDENT, GENERAL BAKERIES LIMITED, AND A. GLEASON FOR THE RESPONDENT, RETAIL, WHOLESALE BAKERY & CONFECTIONERY WORKERS' UNION, LOCAL 461.

DECISION OF THE BOARD: MARCH 24, 1969.

• • •

2. THIS IS AN APPLICATION BROUGHT UNDER SECTION 47A OF THE LABOUR RELATIONS ACT. THE FACTS ARE NOT IN DISPUTE. IN FEBRUARY 1968, GENERAL BAKERIES LIMITED ACQUIRED MAMMY'S BREAD, A DIVISION OF WONDER BAKERIES LIMITED AS A GOING CONCERN. ALL PARTIES ARE IN AGREEMENT THAT THIS TRANSACTION CONSTITUTES A SALE WITHIN THE MEANING OF SECTION 47A OF THE LABOUR RELATIONS ACT. THE PARTIES ARE ALSO IN AGREEMENT THAT THE APPLICATION IS CONCERNED WITH ESTABLISHMENTS OF THE PREDECESSOR AND SUCCESSOR EMPLOYEES AT HAMILTON AND ST. CATHARINES.

3. PRIOR TO THE SALE, THE APPLICANT REPRESENTED A BARGAINING UNIT OF EMPLOYEES OF WONDER BAKERIES LIMITED AT HAMILTON, AND ALSO REPRESENTED A SEPARATE UNIT OF EMPLOYEES OF WONDER BAKERIES LIMITED AT ST. CATHARINES. AT THE SAME TIME, RETAIL, WHOLESALE BAKERY & CONFECTIONERY WORKERS' UNION, LOCAL 461, OF THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC, IS THE BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF GENERAL BAKERIES LIMITED IN DEPOTS IN TORONTO, HAMILTON AND ST. CATHARINES. AS NOTED ABOVE, WE ARE CONCERNED IN THIS APPLICATION ONLY WITH THE DEPOTS AT HAMILTON AND ST. CATHARINES.

4. IT IS AGREED THAT INTERMINGLING OF EMPLOYEES OF THE PREDECESSOR AND SUCCESSOR EMPLOYERS HAS TAKEN PLACE IN THEIR FORMER RESPECTIVE ESTABLISHMENTS IN HAMILTON AND ST. CATHARINES. THERE HAS BEEN NO INTERMINGLING OF HAMILTON EMPLOYEES OF EITHER COMPANY WITH ST. CATHARINES EMPLOYEES OF EITHER COMPANY.

5. THE PARTIES REQUEST THAT A REPRESENTATION VOTE BE HELD TO DETERMINE WHICH OF THE TWO TRADE UNIONS CONCERNED SHALL BE THE BARGAINING AGENT FOR THE EMPLOYEES OF THE SUCCESSOR COMPANY, COMPRISING THE BARGAINING UNITS REPRESENTED BY EACH OF THEM.

6. THE PARTIES ARE NOT IN AGREEMENT AS TO THE FORM OF THE VOTING CONSTITUENCY TO BE USED IN THE REPRESENTATION VOTE. THE APPLICANT UNION PROPOSED THAT THERE BE ONE VOTING CONSTITUENCY COVERING EMPLOYEES IN BOTH THE HAMILTON AND ST. CATHARINES OPERATIONS. THE RETAIL, WHOLESALE UNION REQUEST THAT THERE BE TWO DISTINCT VOTING CONSTITUENCIES, ONE AT HAMILTON AND THE OTHER AT ST. CATHARINES.

7. SECTION 47A SUBSECTION (7) EMPOWERS THE BOARD TO HOLD SUCH REPRESENTATION VOTES AS IT DEEMS APPROPRIATE. SUBSECTION (5)(C) OF SECTION 47A PERMITS THE BOARD TO "AMEND, TO SUCH EXTENT AS THE BOARD DEEMS NECESSARY, ANY CERTIFICATE ISSUED TO ANY TRADE UNION OR ANY BARGAINING UNIT DEFINED IN ANY COLLECTIVE AGREEMENT". IT FOLLOWS FROM A READING OF THE ABOVE SUBSECTIONS THAT THE BOARD HAS WIDE POWERS WITH RESPECT TO FIXING BARGAINING UNITS AND VOTING CONSTITUENCIES IN CASES ARISING UNDER SECTION 47A. THIS IS

NOT TO SAY, HOWEVER, THAT DUE REGARD SHOULD NOT BE GIVEN TO THE BOARD'S NORMAL PRACTICES AS WELL AS TO ANY PRE-EXISTING BARGAINING UNITS WHEN MAKING DETERMINATIONS WITH RESPECT TO VOTING CONSTITUENCIES AND BARGAINING UNIT. IT WOULD APPEAR DESIRABLE THAT THE DETERMINATION SHOULD BE, SUBJECT TO ANY EXCEPTIONAL CIRCUMSTANCES THAT MAY EXIST IN PARTICULAR INSTANCES, CONSISTENT INSO-FAR AS POSSIBLE WITH THE OVERALL PRACTICE OF THE BOARD WITH RESPECT TO THE DETERMINATION OF APPROPRIATE UNITS.

8. IN THE PRESENT INSTANCE, THE PRE-EXISTING BARGAINING UNITS ARE OF LITTLE ASSISTANCE TO THE BOARD, SINCE ONE UNION RE-PRESENTED TWO DISTINCT UNITS, ONE IN HAMILTON AND THE OTHER IN ST. CATHARINES, WHEREAS THE BARGAINING UNIT REPRESENTED BY THE OTHER UNION EMBRACES EMPLOYEES IN BOTH HAMILTON AND ST. CATHARINES. IN THESE CIRCUMSTANCES AND HAVING IN MIND THE BOARD'S GENERAL PRACTICE WITH RESPECT TO THE USE OF GEOGRAPHIC LIMITATIONS IN THE DETERMINATION OF APPROPRIATE UNITS AND MORE PARTICULARLY IN VIEW OF THE FACT THERE IS NO INTERMINGLING OF EMPLOYEES BETWEEN HAMILTON AND ST. CATHARINES (SEE WITTICH'S BREAD LIMITED, BOARD FILE NO. 15405-68-R), THE BOARD DETERMINES THAT REPRESENTATION VOTES BE HELD AMONG EMPLOYEES OF THE RESPONDENT IN THE FOLLOWING VOTING CONSTITUENCIES:

CONSTITUENCY No. 1

ALL ROUTE SALESMEN, SPECIAL DELIVERY DRIVERS, TRANSPORT DRIVERS, GARAGE EMPLOYEES, SPARE SALESMEN AND SHIPPERS OF THE RESPONDENT WORKING AT HAMILTON, SAVE AND EXCEPT FOREMEN OR ROUTE SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN OR ROUTE SUPERVISOR, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED NOT MORE THAN 24 HOURS PER WEEK.

CONSTITUENCY No. 2

ALL ROUTE SALESMEN, SPECIAL DELIVERY DRIVERS, TRANSPORT DRIVERS, GARAGE EMPLOYEES, SPARE SALESMEN AND SHIPPERS OF THE RESPONDENT WORKING AT ST. CATHARINES, SAVE AND EXCEPT FOREMEN OR ROUTE SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN OR ROUTE SUPERVISOR, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED NOT MORE THAN 24 HOURS PER WEEK.

9. ALL EMPLOYEES OF THE RESPONDENT IN THE RESPECTIVE VOTING CONSTITUENCIES ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

10. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL 647 OR RETAIL, WHOLESALE BAKERY & CONFECTIONERY WORKERS' UNION, LOCAL 461.

11. THE REGISTRAR IS DIRECTED TO CAUSE THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE REPRESENTATION VOTE TO BE SEALED PENDING A FURTHER DIRECTION BY THE BOARD.

12. THE MATTER IS REFERRED TO THE REGISTRAR.

INDEXED ENDORSEMENT - SECTION 63

15549-68-M: SAMUEL SHAW (COMPLAINANT) LOCAL 94 CANADIAN UNION OF PUBLIC EMPLOYEES (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: SAMUEL SHAW FOR THE COMPLAINANT, J.K. BROWN, A. KELMAN, DOUG NORRIE, R.J. ANDERSON FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN O.B. SHIME, AND BOARD MEMBER H.F. IRWIN:
MARCH 27, 1969.

1. THIS IS A COMPLAINT PURSUANT TO SECTION 63 OF THE LABOUR RELATIONS ACT ALLEGING THAT THE RESPONDENT TRADE UNION HAS FAILED TO FURNISH THE COMPLAINANT WITH A TRUE COPY OF AN AUDITED FINANCIAL STATEMENT OF ITS AFFAIRS. THE COMPLAINANT WHO IS A MEMBER OF THE RESPONDENT HAD BEEN FURNISHED WITH WHAT PURPORTED TO BE A TRUE COPY OF AN AUDITED FINANCIAL STATEMENT. A COPY OF THE ORIGINAL AUDITED FINANCIAL STATEMENT CONTAINING THREE PAGES WAS FILED WITH THE BOARD AT THE HEARING. THE FIRST PAGE CONTAINED THE USUAL STATEMENT BY THE AUDITOR VERIFYING THAT HE HAS EXAMINED THE BOOKS AND RECORDS OF THE RESPONDENT, OUTLINING CERTAIN OTHER MATTERS AND THEN CONCLUDING WITH THE AUDITOR'S OPINION. THE SECOND PAGE CONTAINED A BALANCE SHEET AND THE THIRD PAGE CONTAINED A STATEMENT OF REVENUE AND EXPENDITURES.

2. THE COMPLAINANT RECEIVED FROM THE RESPONDENT WHAT PURPORTED TO BE A TRUE COPY OF THE AUDITED FINANCIAL STATEMENT CERTIFIED BY THE TREASURER; THAT COPY CONTAINED ONLY PAGES TWO AND THREE OF THE AUDITED FINANCIAL STATEMENT.

3. WHILE THE FURNISHING OF THE PURPORTED TRUE COPY OF THE AUDITED FINANCIAL STATEMENT APPEARS TO HAVE BEEN DONE BONA FIDE AND WITHOUT ANY INTENTION TO MISLEAD, WE FIND THAT THE DOCUMENT FURNISHED TO THE COMPLAINANT IS NOT A TRUE COPY BECAUSE IT DID NOT CONTAIN THE FIRST PAGE OF THE AUDITED FINANCIAL STATEMENT. MOREOVER, THE AUDITOR'S OPINION AND HIS METHODS OF PROCEDURE CONTAINED IN THE FIRST PAGE, FORM AN INTEGRAL PART AND SHOULD BE INCLUDED IN ANY TRUE COPY OF AN AUDITED FINANCIAL STATEMENT.

4. HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES WE HEREBY DIRECT THAT THE RESPONDENT SHALL WITHIN FIVE DAYS FROM THE DATE HEREOF FURNISH THE COMPLAINANT WITH A CERTIFIED TRUE COPY OF THE AUDITED FINANCIAL STATEMENT OF ITS AFFAIRS FOR THE FISCAL PERIOD ENDING DECEMBER 31ST, 1968, SUCH STATEMENT TO CONTAIN A COPY OF EACH AND EVERY PAGE THAT IS INCLUDED IN THE ORIGINAL.

DECISION OF BOARD MEMBER O. HODGES: MARCH 27, 1969.

I CONCUR WITH THE DIRECTION OF THE MAJORITY, BUT I BELIEVE IT TO BE NECESSARY IN THE INTEREST OF A CLEAR UNDERSTANDING OF THE CIRCUMSTANCES OF THIS CASE TO REVIEW CERTAIN EVIDENCE.

THE COMPLAINANT WROTE THE SECRETARY OF THE LOCAL UNION ON DECEMBER 2ND, 1968, AS FOLLOWS:

"THROUGH YOU TO THE TREASURER, I WOULD LIKE TO TAKE ADVANTAGE OF SECTION 63 OF THE LABOUR RELATIONS ACT, WHICH AFFORDS ME THE RIGHT OF A FINANCIAL STATEMENT ACCORDING TO THE TERMS OF THE ACT."

SECTION 63 OF THE ONTARIO LABOUR RELATIONS ACT STATES:

"EVERY TRADE UNION SHALL UPON THE REQUEST OF ANY MEMBER FURNISH HIM, WITHOUT CHARGE, WITH A COPY OF THE AUDITED FINANCIAL STATEMENT OF ITS AFFAIRS TO THE END OF ITS LAST FISCAL YEAR CERTIFIED BY ITS TREASURER OR OTHER OFFICER RESPONSIBLE FOR THE HANDLING AND ADMINISTRATION OF ITS FUNDS TO BE A TRUE COPY, AND, UPON THE COMPLAINT OF ANY MEMBER THAT THE TRADE UNION HAS FAILED TO FURNISH SUCH A STATEMENT TO HIM, THE BOARD MAY DIRECT THE TRADE UNION TO FILE WITH THE REGISTRAR, WITHIN SUCH TIME AS THE BOARD DETERMINES, A COPY OF THE AUDITED FINANCIAL STATEMENT OF ITS AFFAIRS TO THE END OF ITS LAST

FISCAL YEAR VERIFIED BY THE AFFIDAVIT OF ITS TREASURER OR OTHER OFFICER RESPONSIBLE FOR THE HANDLING AND ADMINISTRATION OF ITS FUNDS AND TO FURNISH A COPY OF SUCH STATEMENT TO SUCH MEMBERS OF THE TRADE UNION AS THE BOARD IN ITS DISCRETION DIRECTS, AND THE TRADE UNION SHALL COMPLY WITH SUCH DIRECTION ACCORDING TO ITS TERMS."

IT WAS ADMITTED BY THE COMPLAINANT THAT THE FISCAL YEAR END IS DECEMBER 31ST. THUS THE MOST RECENT ANNUAL STATEMENT PRESUMABLY AVAILABLE ON DECEMBER 2ND, 1967 WOULD HAVE BEEN FOR THE YEAR END DECEMBER 31ST, 1967. THE COMPLAINANT FILED A COPY OF A FINANCIAL STATEMENT DATED OCTOBER 19TH, 1967 WITH THE BOARD, WHICH WAS FOR A NINE MONTH PERIOD ENDING SEPTEMBER 30TH, 1967. THE COMPLAINANT WAS PRESIDENT OF THE LOCAL UNION FOR THE YEAR 1967, BUT NOT FOR THE YEAR 1968.

THE COMPLAINANT, SHAW, FILED FORM 29 (COMPLAIN CONCERNING FINANCIAL STATEMENT) ON JANUARY 13, 1969, WHEREIN HE STATES:

"SUBMITTED LETTER OF REQUEST DECEMBER 2, 1968,
ACCORDING TO SECTION 63 OF THE ACT."

"GIVEN TO ME AUDITED STATEMENT FOR 1967"

IN CONSIDERING THE PRACTICAL MATTER OF GETTING AN ANNUAL FINANCIAL STATEMENT FROM A CHARTERED ACCOUNTANT AT THE END OF A CALENDAR YEAR WHEN SUCH PERSONS ARE VERY BUSY, TWO WEEKS IS A SHORT TIME IN WHICH TO EXPECT COMPLIANCE.

IT IS CLEAR THAT THE COMPLAINANT WANTED THE 1967 ANNUAL STATEMENT RATHER THAN THE 1968 ANNUAL STATEMENT. IT IS TO BE NOTED THAT THE STATEMENT DATED JANUARY 18TH, 1969 AND FILED WITH THE BOARD ON MARCH 19TH, 1969, IS FOR THE "THREE AND TWELVE MONTH PERIOD" ENDING DECEMBER 31ST, 1968, ACCORDING TO THE AUDITOR'S ANNUAL REPORT.

THERE IS NO EVIDENCE BEFORE THE BOARD OF A FINANCIAL STATEMENT FOR THE FISCAL YEAR ENDING DECEMBER 31ST, 1967. THE FINANCIAL STATEMENT DATED JANUARY 18TH, 1969 INCLUDES OCTOBER, NOVEMBER AND DECEMBER OF 1967, AS WELL AS THE TWELVE MONTHS OF 1968.

I CONCUR WITH THE FINDING OF THE MAJORITY IN THE MATTER OF THE "AUDITOR'S REPORT" BEING A PART OF THE "FINANCIAL STATEMENT", BUT I BELIEVE THAT SECTION 63 OF THE ACT IS OPEN TO THE INTERPRETATION OBVIOUSLY PLACED UPON IT BY THE RESPONDENT LOCAL UNION - THAT THE "FINANCIAL STATEMENT" IS COMPRISED OF THE PAGES COVERED WITH NUMBERS, AND NOT THE INTRODUCTORY WRITTEN REMARKS AND ANALYSIS OF THE AUDITOR AS WELL. FEW INDIVIDUALS OUTSIDE THE ACCOUNTING PROFESSION WOULD KNOW WHAT COMPRIMES A "FINANCIAL STATEMENT".

WITH THE INCLUSION OF THE FOREGOING REASONS I CONCUR WITH THE MAJORITY.

INDEXED ENDORSEMENT - SECTION 79(2)

15200-68-M: RIDGETOWN DISTRICT HIGH SCHOOL BOARD (APPLICANT) V.
CANADIAN UNION OF PUBLIC EMPLOYEES AND GEORGE SHOEMAKER (RESPONDENTS).

BEFORE: H.D. BROWN, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES
AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: R.C. FILION FOR THE APPLICANT,
W.A. ACTON FOR THE RESPONDENTS.

DECISION OF THE BOARD: MARCH 10, 1969.

1. FOLLOWING SERVICE OF THE REPORT OF THE EXAMINER IN THIS MATTER, A HEARING WAS HELD ON JANUARY 27TH, 1969, TO HEAR THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO. THE QUESTION FOR THE BOARD TO DETERMINE IN THIS MATTER IS WHETHER, PURSUANT TO SECTION 79(2) OF THE LABOUR RELATIONS ACT, CERTAIN PERSONS EMPLOYED AT THE PREMISES OF THE APPLICANT WERE EMPLOYEES OF GEORGE SHOEMAKER OR THE APPLICANT.

2. THE APPLICANT HAD ENTERED INTO A CONTRACT WITH ARCHIE MCLEAN FOR THE PERFORMANCE OF JANITORIAL SERVICES, WHICH CONTRACT EXPIRED JUNE 1ST, 1968. THE SUBJECT OF THAT CONTRACT IN RELATIONSHIP TO THE PARTIES WAS DEALT WITH AT A HEARING OF THE BOARD RESULTING IN THE BOARD'S DECISION DATED JULY 19TH, 1968 (BOARD FILE #14739-68-R). THE APPLICANT HEREIN ALLEGES THAT THERE IS A SUBSTANTIAL DIFFERENCE BETWEEN THE CIRCUMSTANCES SURROUNDING THAT CONTRACT AND A LATER CONTRACT BETWEEN THE APPLICANT AND GEORGE SHOEMAKER AND SUBMITS THAT THE EMPLOYEES NOW CONCERNED ARE NOT EMPLOYEES OF THE APPLICANT BUT OF GEORGE SHOEMAKER.

3. THE EVIDENCE ESTABLISHES THAT THE APPLICANT ADVERTISED FOR TENDERS FOR THE POSITION OF CUSTODIAN PROVIDING FOR DUTIES TO COMMENCE ON JULY 1ST, 1968, AND WHICH ADVERTISEMENT STATED "THE APPLICANT MUST BE PREPARED TO HIRE HIS OWN HELP AND BE FULLY QUALIFIED TO OPERATE BOILERS." GEORGE SHOEMAKER SUBSEQUENTLY BECAME THE SUCCESSFUL TENDEREE AND ENTERED INTO A CONTRACT WITH THE APPLICANT ON JUNE 25TH, 1968. BY THE TERMS OF THIS CONTRACT, GEORGE SHOEMAKER, CALLED THEREIN THE "CARETAKER," AGREED TO PERFORM AND PROVIDE ALL PROPER CARETAKING AND JANITORIAL SERVICES TO THE LANDS AND BUILDINGS AND EQUIPMENT OF THE BOARD. PARAGRAPH 2 OF THAT CONTRACT IS OF IMPORTANCE IN THIS MATTER AND IS AS FOLLOWS:

2. THE CARETAKER SHALL EMPLOY SUCH ASSISTANCE AS HE CHOOSES, EXCEPT THAT HE SHALL HAVE AT LEAST ONE MALE ASSISTANT AND AT LEAST FOUR (4) CLEANING LADIES. THE STAFF SHALL BE UNDER HIS DIRECTION AND CONTROL AND SHALL CONDUCT THEMSELVES IN A PROPER MANNER AT ALL TIMES.

PARAGRAPH 4 OF THAT CONTRACT STIPULATES THE AMOUNT OF CONSIDERATION PAYABLE AND PROVIDES FOR MONTHLY PAYMENTS "TO BE DIVIDED AMONG AND PAID TO THE CARETAKER AND HIS STAFF IN SUCH PROPORTION AS THE CARETAKER MAY INDICATE TO THE SECRETARY OF THE BOARD, AT A SUFFICIENT TIME PRIOR TO THE 20TH DAY OF THE MONTH, SO THAT PAYMENT MAY BE MADE BY THE 20TH DAY OF EACH MONTH; FOR THE PURPOSES OF PAYMENT ONLY THE EMPLOYEES SHALL BE CONSIDERED EMPLOYEES OF THE BOARD" AND THE BOARD AGREES TO MAKE DEDUCTIONS FOR WELFARE AND BENEFIT PAYMENTS FROM THE EMPLOYEES' REMUNERATION. IT IS ALSO SIGNIFICANT TO NOTE THAT IN THE AGREEMENT THE CARETAKER IS UNDER THE CONTROL OF THE PRINCIPAL OR THE CHAIRMAN OF THE PROPERTY COMMITTEE.

4. PRIOR TO SIGNING THE ABOVE CONTRACT, GEORGE SHOEMAKER ENTERED INTO INDIVIDUAL AGREEMENTS WITH FIVE PERSONS ENGAGING THEM AS HIS EMPLOYEES. EACH AGREEMENT STIPULATES THE PERIOD OF WORK, A GENERAL DESCRIPTION OF THE DUTIES, HOURS OF WORK, CONSIDERATION, VACATION ENTITLEMENT AND PROVISION FOR TERMINATION BY THE EMPLOYER (GEORGE SHOEMAKER). GEORGE SHOEMAKER AGREED THAT IT WOULD BE UP TO HIMSELF TO FIRE ANY OF THESE PERSONS IF IT BECAME NECESSARY. HE TESTIFIED THAT THE ACCOUNTING WITH RESPECT TO INCOME TAX DEDUCTIONS, ETC., IS PROVIDED BY THE APPLICANT BUT HE ADVISES THE SECRETARY THE AMOUNT THAT EACH PERSON IS TO BE PAID. (A COPY OF ONE OF SUCH DIRECTIONS BY SHOEMAKER WAS FILED WITH THE BOARD). SHOEMAKER MAINTAINED THAT HE DOES NOT HAVE TO REPORT TO ANYONE ABOUT THE JANITORIAL SERVICES AND HE IS IN COMPLETE CHARGE OF THE EMPLOYEES. JOHN MCLEAN, AN EMPLOYEE, TESTIFIED THAT HE OBTAINS HIS INSTRUCTIONS FROM SHOEMAKER AND MAY BE ASKED BY THE PRINCIPAL OR TEACHERS TO DO CERTAIN THINGS BUT IF HE DID NOT WANT TO DO SO HE WOULD APPEAL TO SHOEMAKER. HE AGREED THAT HE COULD BE FIRED BY SHOEMAKER.

5. IT IS READILY APPARENT FROM THE EVIDENCE THAT THE EFFECTIVE CONTROL OF THE JANITORIAL STAFF INVOLVED IS EXERCISED BY SHOEMAKER. HE IS RESPONSIBLE IN THE CONTRACT TO THE APPLICANT FOR THE PROVISION OF JANITORIAL SERVICES BUT HIS RELATIONSHIP MUST BE AS AN INDEPENDENT CONTRACTOR, HAVING REGARD TO THE MANNER IN WHICH THAT RELATIONSHIP AROSE, I.E. THROUGH TENDER, AND THE TERMS OF THE CONTRACT. IN PARAGRAPH 4 OF THAT CONTRACT ABOVE SET OUT IN PART, IT IS AGREED THAT THE APPLICANT WILL "FOR THE PURPOSES OF PAYMENT ONLY" TREAT THESE PERSONS AS EMPLOYEES. WE FIND THAT THIS FORMS PART OF THE OVERALL CONSIDERATION FOR THE CONTRACT AND THEREFORE DOES NOT DETRACT FROM THE ACTUAL CONTROL OF THE PERSONNEL WHICH IS VESTED IN SHOEMAKER BY THE INDIVIDUAL EMPLOYMENT CONTRACTS. THERE CAN BE NO DOUBT THAT THESE PERSONS INTENDED BY THEIR ACTIONS TO BECOME EMPLOYEES OF SHOEMAKER AND THE MERE ACCOUNTING ARRANGEMENTS EXPRESSED IN HIS AGREEMENT WITH THE APPLICANT DO NOT OPERATE TO OVERRIDE THIS CONSENSUS. THEY DID NOT AGREE TO BECOME EMPLOYEES OF THE APPLICANT. IN THIS RESPECT, SEE THE LOBLAW GROCETERIAS CASE, C.C.H. '64-'66 TRANSFER BINDER #16,078, WHERE THE BOARD EXAMINED IN CONSIDERABLE DETAIL THE EMPLOYER-EMPLOYEE RELATIONSHIP AND HAVE PARTICULAR

REFERENCE TO THE PASSAGES AT PAGES 13,251 AND 13,256. FOLLOWING THE PRINCIPLES AND CRITERIA SET FORTH IN THAT CASE IN DETERMINING WHO IS THE EMPLOYER INVOLVED IN THIS APPLICATION, THE EVIDENCE CLEARLY SUPPORTS THE APPLICANT'S POSITION.

6. WE THEREFORE FIND THAT ON ALL THE EVIDENCE AND FOR THE PURPOSES OF THE LABOUR RELATIONS ACT GEORGE SHOEMAKER, AND NOT THE APPLICANT, IS THE EMPLOYER OF THE FIVE EMPLOYEES.

INDEXED ENDORSEMENTS - SECTION 79A

15534-68-M: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (TRADE UNION) v. PIGOTT CONSTRUCTION CO. LIMITED (EMPLOYER).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: A. NEIL, R. FORD AND P. HITCHEN FOR THE TRADE UNION, A.J. CLARK AND D.H. STEVENS FOR THE EMPLOYER, O. D'AGOSTINI FOR LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, G.W. ALLEN FOR A PROVINCIAL COUNCIL OF CONSTRUCTION UNIONS.

DECISION OF THE BOARD: MARCH 4, 1969.

1. THIS IS A REFERENCE FROM THE MINISTER MADE UNDER SECTION 79A OF THE LABOUR RELATIONS ACT. THE QUESTION REFERRED TO THE BOARD IS WHETHER OR NOT IN ALL THE CIRCUMSTANCES THE MINISTER HAS THE POWER UNDER THE ACT TO APPOINT A CONCILIATION OFFICER.

2. THE EMPLOYER (HEREINAFTER REFERRED TO AS PIGOTT) ON APRIL 20TH, 1967, ENTERED INTO A COLLECTIVE AGREEMENT WITH FOUR TRADE UNIONS LISTED IN APPENDIX 1 OF THE AGREEMENT AND A PROVINCIAL COUNCIL OF CONSTRUCTION UNIONS. THE TRADE UNIONS LISTED IN APPENDIX 1 ARE:

INTERNATIONAL ASSOCIATION OF BRIDGE STRUCTURAL AND ORNAMENTAL IRON WORKERS (RODMEN'S SECTION).

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA.

INTERNATIONAL UNION OF OPERATING ENGINEERS.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA.

3. THE TWO RECITALS APPEARING AT THE OUTSET OF THE AGREEMENT READ AS FOLLOWS:

WHEREAS THE UNIONS ARE DESIROUS OF FORMING A COUNCIL FOR THE PURPOSE OF BRINGING ABOUT UNIFORMITY OF ADMINISTRATION OF ALL COLLECTIVE AGREEMENTS GOVERNING THE EMPLOYEES OF THE EMPLOYER THROUGHOUT THE PROVINCE OF ONTARIO AND HAVE ACCORDINGLY AGREED TO ESTABLISH AND MAINTAIN IN OPERATION THE COUNCIL.

AND WHEREAS THE EMPLOYER RECOGNIZES THE COUNCIL AS THE EXCLUSIVE BARGAINING AGENT IN ONTARIO FOR ALL OF ITS EMPLOYEES ENGAGED ON CONSTRUCTION PROJECTS.

SET OUT BELOW ARE THE TERMS AND CONDITIONS OF THE AGREEMENT.

4. ARTICLE 1 TITLED "CONSTITUTION OF COUNCIL" READS:

1.01 EACH OF THE UNIONS LISTED IN APPENDIX 1, JOINTLY AND SEVERALLY AGREE TO ESTABLISH AND MAINTAIN A PROVINCIAL COUNCIL OF CONSTRUCTION UNIONS FOR THE PURPOSE OF BECOMING A PARTY TO THIS AGREEMENT AND OF ADMINISTERING THIS AGREEMENT TO THE EXTENT HEREINAFTER INDICATED ON BEHALF OF EACH OF THE SAID UNIONS.

1.02 THE COUNCIL SHALL CONSIST OF ONE INTERNATIONAL REPRESENTATIVE OF EACH OF THE SAID UNIONS. THE INTERNATIONAL REPRESENTATIVES SIGNATORIES TO THIS AGREEMENT, SHALL BE AS SET OUT IN APPENDIX 3.

1.03 EACH OF THE ABOVE NAMED INTERNATIONAL REPRESENTATIVES SHALL CONTINUE TO REPRESENT THE UNION BY WHOM HE WAS NAMED OR THROUGH HIS AUTHORIZED DELEGATE, UNTIL REPLACED BY SAID UNION. REPLACEMENT OF A NAMED REPRESENTATIVE SHALL BE ACCOMPLISHED ONLY BY A UNION GIVING THIRTY (30) DAYS NOTICE IN WRITING TO EACH OF THE OTHER MEMBERS OF THE COUNCIL AND EMPLOYER.

1.04 SHOULD IT BECOME APPROPRIATE FOR ANY GROUP OF EMPLOYEES OF THE EMPLOYER TO BE REPRESENTED BY, OR TO BECOME MEMBERS OF, A UNION OTHER THAN ONE OF THE UNIONS NAMED IN APPENDIX 1, THEN SUCH ADDITIONAL UNION MAY APPOINT A REPRESENTATIVE AND BECOME A MEMBER OF AND PARTICIPATE IN THE ACTIVITIES OF THE COUNCIL IF THE EXISTING MEMBERS OF THE COUNCIL AGREE TO ACCEPT SUCH NEW MEMBER.

1.05 EACH UNION HEREBY COVENANTS AND AGREES TO DELEGATE TO THE COUNCIL THUS CONSTITUTED COMPLETE AND FINAL AUTHORITY TO BARGAIN WITH THE EMPLOYER ON BEHALF OF THE SAID UNION AND THE EMPLOYEES WHOM IT REPRESENTS, AND TO ADMINISTER THIS AGREEMENT AND SETTLE ANY MATTERS OF DISPUTE WHICH MAY ARISE BETWEEN THE EMPLOYER AND ANY OF THE UNIONS OR THE COUNCIL. FURTHERMORE IT IS UNDERSTOOD THAT THIS COVENANT IS BINDING ON EACH OF THE LOCAL UNIONS NAMED IN APPENDIX 2 AND SIGNATORY THERETO IN APPENDIX 4. EACH OF THE SAID UNIONS REPRESENTS AND ENSURES THAT, BASED ON WRITTEN AUTHORIZATION, IT HAS AUTHORITY TO ACT ON BEHALF OF EACH OF ITS SAID LOCALS TO THE EXTENT NECESSARY TO MAKE EACH OF THE LOCAL AGREEMENTS CONFORM TO THE PROVISIONS OF THIS AGREEMENT.

1.06 THE COUNCIL SO CONSTITUTED ACCEPTS THE DELEGATION OF AUTHORITY HEREINBEFORE SET OUT, AND UNDERTAKES TO ADMINISTER THIS COLLECTIVE AGREEMENT AND TO BARGAIN COLLECTIVELY FOR THE RENEWAL THEREOF ON BEHALF OF ALL EMPLOYEES OF THE EMPLOYER FOR WHOM THE COUNCIL IS AUTHORIZED TO BARGAIN AND ON BEHALF OF THOSE WHOM THE EMPLOYER CONTEMPLATES EMPLOYING DURING THE TERM OF ANY RENEWED AGREEMENT.

5. APPENDIX 3 LISTS THE TRADE UNIONS SHOWN IN APPENDIX 1 AND THE SIGNATURES OF THE FOUR INTERNATIONAL REPRESENTATIVES WHO ARE MEMBERS OF THE COUNCIL. APPENDIX 2 IS A LIST OF THE LOCATION AND NUMBER OF EACH LOCAL OF THE FOUR INTERNATIONAL TRADE UNIONS BOUND BY THE AGREEMENT. APPENDIX 4 BEARS THE SIGNATURES OF THE SIGNING OFFICERS FOR PIGOTT AND THE SIGNATURES OF A SIGNING OFFICER FOR EACH OF THE LOCALS OF THE FOUR INTERNATIONAL UNIONS COVERED BY THE AGREEMENT. THE SIGNATURE OF "GEORGE P. ALLEN" APPEARS FOR THE LABOURERS', LOCAL 506.

6. ARTICLE 2 OF THE AGREEMENT TITLED "RECOGNITION" READS:

THE EMPLOYER AGREES TO RECOGNIZE THE COUNCIL COMPRISED OF THE FOLLOWING UNIONS:

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (RODMEN'S SECTION).

LABOURERS INTERNATIONAL UNION OF NORTH AMERICA.

INTERNATIONAL UNION OF OPERATING ENGINEERS.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AND

THE LOCAL UNIONS PARTIES TO THIS COLLECTIVE
AGREEMENT AS SET OUT IN APPENDIX 4, AS THE
EXCLUSIVE BARGAINING AGENT FOR ALL EMPLOYEES OF
THE EMPLOYER ON CONSTRUCTION PROJECTS WITHIN THE
PROVINCE OF ONTARIO FOR WHOM THE COUNCIL IS
AUTHORIZED TO BARGAIN,

SAVE AND EXCEPT ANY NON-WORKING FOREMEN, THOSE
ABOVE THE RANK, THE OFFICE AND CLERICAL STAFF AND
THE ENGINEERING STAFF.

7. COUNSEL FOR PIGOTT SUBMITS THAT BY THE RECITALS AND THE PROVISIONS OF ARTICLE 1 OF THE COLLECTIVE AGREEMENT EACH OF THE LOCALS LISTED IN APPENDIX 2, WHICH INCLUDES LABOURERS', LOCAL 506, SURRENDERED ANY BARGAINING RIGHTS WHICH THEY HELD IN RELATION TO EMPLOYEES OF PIGOTT TO THEIR RESPECTIVE INTERNATIONAL UNIONS AND THAT THE INTERNATIONAL UNIONS, IN TURN, HANDED OVER THEIR RESPECTIVE BARGAINING RIGHTS TO THE COUNCIL. COUNSEL ARGUES THAT NO LOCAL CAN REVOKE THE BARGAINING RIGHTS HELD BY THE COUNCIL OR FOR THAT MATTER NONE OF THE FOUR INTERNATIONAL UNIONS COULD TAKE BACK THE BARGAINING RIGHTS HELD BY THE COUNCIL, UNLESS THE COUNCIL WAS DIS-SOLVED. EVEN IN THAT EVENTUALITY, ACCORDING TO COUNSEL, THE INTERNATIONAL UNIONS WOULD CONTINUE TO HOLD THE BARGAINING RIGHTS FOR THE NAMED LOCALS UNLESS THE FORMER ELECTED TO RESTORE THE BARGAINING RIGHTS TO THEIR RESPECTIVE LOCALS. IN SHORT, COUNSEL SUBMITS THAT LOCAL 506 OF THE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA IS PERMANENTLY A PARTY TO ANY COLLECTIVE AGREEMENT NEGOTIATED BY THE COUNCIL. COUNSEL REFERRED TO CERTAIN OTHER ARTICLES OF THE COLLECTIVE AGREEMENT WHICH HE MAINTAINS SUPPORT HIS INTERPRETATION OF ARTICLE 1 OF THE AGREEMENT. COUNSEL RECOGNIZED THAT THE PROVISIONS OF ARTICLE 2 ARE NOT IN ACCORD WITH THE PROVISIONS OF ARTICLE 1. HE ARGUES, HOWEVER, THAT VIEWING THE TERMS OF THE COLLECTIVE AGREEMENT AS A WHOLE, HIS INTERPRETATION IS THE ONE THAT SHOULD BE ACCEPTED BY THE BOARD.

8. ARTICLE 2, WHICH IS THE RECOGNITION CLAUSE OF THE AGREEMENT, PROVIDES THAT THE COUNCIL IS COMPRISED OF THE FOUR INTERNATIONAL UNIONS AND THE NAMED LOCAL UNIONS OF THE FOUR INTERNATIONAL UNIONS WHICH ARE SPECIFICALLY DESCRIBED AS PARTIES TO THE AGREEMENT. WE DO NOT ACCEPT COUNSEL FOR THE COMPANY'S CONTENTION THAT THE LOCAL UNIONS IRRETRIEVABLY DIVESTED THEMSELVES OF THEIR BARGAINING RIGHTS. HAVING REGARD TO THE LANGUAGE OF ARTICLE 2, WE FIND THAT THE LOCAL UNIONS ARE PARTIES TO THE COUNCIL AGREEMENT. WE FURTHER FIND THAT THEY CAN REASSERT AND EXERCISE THE BARGAINING RIGHTS THEY HELD IN RELATIONS TO THE EMPLOYEES OF PIGOTT FALLING UNDER THE LOCALS' JURIS-DICTION.

9. ARTICLE 15 OF THE COLLECTIVE AGREEMENT PROVIDES THAT IT IS TO REMAIN IN EFFECT UNTIL OCTOBER 31ST, 1968. THE ARTICLE FURTHER PROVIDES THAT NEGOTIATIONS FOR THE RENEWAL OF THE AGREEMENT MAY BE REQUESTED BY EITHER THE EMPLOYER OR BY THE COUNCIL WITHIN 90 DAYS OF THE EXPIRY DATE AND IF NO SUCH REQUEST IS MADE THE AGREEMENT AUTOMATICALLY CONTINUES FROM YEAR TO YEAR.

10. BY LETTER DATED JULY 23RD, 1968, RAYMOND FORD, THE BUSINESS MANAGER OF LABOURERS', LOCAL 506, ADVISED THE LABOURERS' INTERNATIONAL UNION THAT IT WAS REVOKING THE AUTHORITY OF THE INTERNATIONAL TO NEGOTIATE A RENEWAL OF THE COUNCIL AGREEMENT ON BEHALF OF LOCAL 506 AND DIRECTED THE INTERNATIONAL TO SO ADVISE PIGOTT AND THE COUNCIL. LOCAL 506 STATED IN ITS LETTER THAT IT INTENDED TO DEAL DIRECTLY WITH PIGOTT. BY COVERING LETTER DATED AUGUST 2ND, 1968, LOCAL 506 SENT A COPY OF ITS LETTER OF JULY 23RD, 1968 TO PIGOTT. BY ANOTHER LETTER DATED AUGUST 2ND, 1968, LOCAL 506 REQUESTED THAT PIGOTT ENTER INTO NEGOTIATIONS FOR A NEW COLLECTIVE AGREEMENT, PURSUANT TO ARTICLE 15 OF THE COUNCIL AGREEMENT. D. H. STEVENS, THE DIRECTOR OF INDUSTRIAL RELATIONS FOR PIGOTT, IDENTIFIED A LETTER DATED AUGUST 8TH ADDRESSED TO LOCAL 506, TO THE ATTENTION OF RAYMOND FORD, AND TESTIFIED THAT THE LETTER WAS MAILED FROM HIS OFFICE. IN THIS LETTER STEVENS ENQUIRED OF FORD AS TO THE BASIS UPON WHICH LOCAL 506 FELT IT HAD THE RIGHT TO NEGOTIATE SEPARATELY FOR THE RENEWAL OF THE COUNCIL AGREEMENT. FORD ADVISED THE BOARD AT THE HEARING IN THIS MATTER THAT LOCAL 506 HAD NOT RECEIVED STEVENS' LETTER.

11. WHILE THERE WAS NO REASON FOR A REPRESENTATIVE OF LOCAL 506 TO BE PARTY TO ANY NEGOTIATIONS, IT IS A MATTER OF FACT THAT LOCAL 506 DID NOT PARTICIPATE IN THE NEGOTIATIONS FOR THE RENEWAL OF THE COUNCIL AGREEMENT. A NEW COUNCIL AGREEMENT WAS ENTERED INTO ON NOVEMBER 29TH, 1968. LOCAL 506 IS NOT LISTED AS ONE OF THE LABOURERS' LOCALS IN APPENDIX 2 NOR IS IT A SIGNATORY AS ONE OF THE LOCALS OF THE LABOURERS' INTERNATIONAL UNION IN APPENDIX 4 THAT ARE BOUND BY THE AGREEMENT. ON DECEMBER 30TH, 1968, LOCAL 506 REQUESTED THE APPOINTMENT OF A CONCILIATION OFFICER. PIGOTT TOOK THE POSITION THAT THE REQUEST SHOULD BE DENIED.

12. BY ITS LETTER OF JULY 23RD, 1968, LOCAL 506 SERVED NOTICE ON ITS INTERNATIONAL UNION AND SUBSEQUENTLY ON PIGOTT THAT IT DID NOT INTEND TO BE PARTY TO ANY FURTHER COLLECTIVE AGREEMENTS NEGOTIATED BETWEEN PIGOTT AND THE COUNCIL AFTER THE EXPIRY DATE OF THE COUNCIL AGREEMENT ON OCTOBER 31ST, 1968. THIS MEETS THE REQUIREMENTS OF SECTION 38(4) WHICH PROVIDES THAT A TRADE UNION BY ITSELF CAN NOTIFY AN EMPLOYER IN WRITING BEFORE A NEW COLLECTIVE AGREEMENT IS ENTERED INTO THAT IT WILL NOT BE BOUND BY THE AGREEMENT. FURTHER, LOCAL 506 GAVE TIMELY NOTICE TO PIGOTT OF ITS DESIRE TO BARGAIN FOR A SEPARATE AGREEMENT.

COUNSEL FOR PIGOTT NOTED THAT NO REPLY WAS EVEN RECEIVED TO THE COMPANY'S LETTER OF AUGUST 8TH, 1968, WHICH WAS SENT IN REPLY TO LOCAL 506'S LETTER OF AUGUST 2ND, 1968, GIVING NOTICE OF ITS DESIRE TO BARGAIN. LOCAL 506 FOR ITS PART CLAIMS TO HAVE NO RECORD OF RECEIVING THE COMPANY'S LETTER. BE THAT AS IT MAY, THE FACT IS THAT NOTICE WAS GIVEN BY LOCAL 506 AND LOCAL 506 DID NOT EXECUTE THE NEW AGREEMENT OF NOVEMBER 29TH, 1968. IN THESE CIRCUMSTANCES, THE COMPANY WOULD HAVE EVERY REASON TO AT LEAST ASSUME THAT LOCAL 506 DID NOT CONSIDER ITSELF BOUND BY THE NEW AGREEMENT.

13. FOR THE REASONS GIVEN ABOVE, WE FIND AS A MATTER OF FACT THAT LOCAL 506 IS NOT BOUND BY THE AGREEMENT OF NOVEMBER 29TH, 1968. WE FURTHER FIND FOR THE REASONS ALREADY OUTLINED THAT THE MINISTER HAS THE AUTHORITY UNDER THE LABOUR RELATIONS ACT TO APPOINT A CONCILIATION OFFICER.

15698-68-M: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (TRADE UNION) V. TURESKI CONSTRUCTION CO., MOIR CONSTRUCTION COMPANY LIMITED AND JACK W. HARPER CONSTRUCTION LTD. (EMPLOYERS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS
P.J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: STANLEY SIMPSON AND E.H. MANCINELLI FOR THE TRADE UNION; MR. EDWARD VANDERKLOET FOR CHRISTIAN LABOUR ASSOCIATION OF CANADA.

DECISION OF THE BOARD: MARCH 18, 1969.

1. THE MINISTER HAS REFERRED TO THE ONTARIO LABOUR RELATIONS BOARD, PURSUANT TO SECTION 79A OF THE LABOUR RELATIONS ACT, THE QUESTION AS TO WHETHER HE HAS THE AUTHORITY UNDER SUBSECTION 4 OF SECTION 34 OF THAT ACT TO APPOINT A NOMINEE FOR THE EMPLOYERS TO A BOARD OF ARBITRATION.

2. THE COUNSEL FOR THE TRADE UNION ADVISED THE BOARD AT THE HEARING THAT THEY DID NOT INTEND TO PROCEED WITH RESPECT TO TURESKI CONSTRUCTION CO. AND MOIR CONSTRUCTION COMPANY LIMITED AND OFFERED NO EVIDENCE OR ARGUMENT WITH RESPECT THERETO. THE BOARD HAS, THEREFORE ADDRESSED ITSELF TO THE QUESTION PROPOSED BY THE MINISTER ONLY INsofar as it has reference to JACK W. HARPER CONSTRUCTION LTD.

3. THE TRADE UNION FILED A COLLECTIVE AGREEMENT BETWEEN LABORER'S INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 AND EACH MEMBER OF THE NIAGARA CONSTRUCTION ASSOCIATION. THE TERM OF THE AGREEMENT RUNS FROM AUGUST 26TH, 1968 UNTIL APRIL 30TH, 1970

AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE. MR. ROBERT BRUCE KERR, GENERAL MANAGER OF THE NIAGARA CONSTRUCTION ASSOCIATION IDENTIFIED THE AGREEMENT AND STATED THAT HE HAD BEEN THE GENERAL MANAGER OF THE ASSOCIATION AT THE TIME THE AGREEMENT WAS SIGNED. HE TESTIFIED THAT JACK W. HARPER CONSTRUCTION LTD. WAS A MEMBER OF THE ASSOCIATION AT THE TIME THE AGREEMENT WAS SIGNED ON THE 5TH OF SEPTEMBER 1968. HE FURTHER TESTIFIED THAT HE HAD BEEN AUTHORIZED BY THE OFFICERS OF JACK W. HARPER CONSTRUCTION LTD. TO ADVISE THE BOARD THAT THEY ACKNOWLEDGE THAT THEY ARE BOUND BY THE TERMS OF THE COLLECTIVE AGREEMENT.

4. IN VIEW OF THE FOREGOING, THE ANSWER TO THE MINISTER INSOFAR AS JACK W. HARPER CONSTRUCTION LTD. IS CONCERNED IS 'YES'.

INDEXED ENDORSEMENTS - JURISDICTIONAL DISPUTES

15650(A)-68-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (COMPLAINANT) v. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 AND THE FOUNDATION COMPANY OF CANADA LIMITED (RESPONDENTS).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: R. KOSKIE AND A.J. FOUCault FOR THE COMPLAINANT, LAURENCE ARNOLD AND P.E. GUERTIN FOR THE RESPONDENT UNION, W.F. FITZGERALD FOR THE RESPONDENT COMPANY.

DECISION OF J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, FOR THE MAJORITY, AND DISSENTING DECISIONS OF BOARD MEMBERS E. BOYER AND R.W. TEAGLE:

MARCH 7, 1969.

1. THIS IS A COMPLAINT MADE UNDER SECTION 66 OF THE LABOUR RELATIONS ACT.

2. THE WORK IN DISPUTE IS THE STRIPPING OF "BUILT-IN-PLACE" WALL FORMS, WHICH ARE TO BE USED AGAIN, ON THE IRON ORE RECOVERY PLANT PROJECT OF THE INTERNATIONAL NICKEL COMPANY OF CANADA AT COPPER CLIFF. THE COMPLAINANT IS REQUESTING THAT THE BOARD MAKE A DIRECTION CONCERNING THE ASSIGNMENT OF WORK MADE BY THE RESPONDENT FOUNDATION COMPANY OF CANADA LIMITED, THE GENERAL CONTRACTOR ON THE PROJECT. MORE PARTICULARLY, THE COMPLAINANT IS REQUESTING THAT THE BOARD MAKE THE SAME DIRECTION THAT IT MADE IN THE FRASER-BRACE ENGINEERING COMPANY, LIMITED COMPLAINT (BOARD FILE NO. 14743(A)-68-JD). THE LATTER COMPLAINT INVOLVED THE SAME WORK THAT IS THE SUBJECT OF THE INSTANT DISPUTE.

3. THE PARTIES TO THIS PROCEEDING AGREED THAT THE EVIDENCE ADDUCED IN THE FRASER-BRACE ENGINEERING COMPANY, LIMITED COMPLAINT, SUPRA, SHOULD BE APPLIED IN THE INSTANT COMPLAINT. ADDITIONAL EVIDENCE WAS ADDUCED AT THE HEARING IN THIS MATTER BY BOTH THE COMPLAINANT AND THE RESPONDENT CARPENTERS' UNION.

4. IN PARAGRAPH 26 OF THE BOARD'S DECISION IN THE FRASER-BRACE ENGINEERING COMPANY, LIMITED COMPLAINT, SUPRA, HAVING REGARD TO THE LANGUAGE OF THE DECISION OF THE NATIONAL JOINT BOARD IN THE CECO STEEL PRODUCTS DISPUTE OVER THE STRIPPING OF STEEL FORMS ON A PROJECT IN NEWPORT, RHODE ISLAND, THIS BOARD DREW THE INFERENCE THAT THE NATIONAL JOINT BOARD WOULD SEEM TO HAVE CEASED TO GIVE ANY WEIGHT TO THE OCTOBER 3RD, 1949 MEMORANDUM ON CONCRETE FORMS. A LETTER DATED OCTOBER 22ND, 1968, BEARING THE SIGNATURE OF WILLIAM J. COUR, THE CHAIRMAN OF THE NATIONAL JOINT BOARD, WAS FILED IN EVIDENCE IN THE INSTANT COMPLAINT. BY THAT LETTER, CHAIRMAN COUR AFFIRMED THAT THE LANGUAGE OF THE JOINT BOARD IN THE CECO CASE WAS NOT INTENDED TO REFER TO THE 1949 MEMORANDUM AND AFFIRMED THAT THE MEMORANDUM IS STILL RECOGNIZED BY THE JOINT BOARD AS AN ATTESTED AGREEMENT UNDER ITS PROCEDURAL RULES AND IS REGULARLY USED WHEN APPLICABLE IN MAKING JOB DECISIONS.

5. HAVING REGARD TO ALL OF THE EVIDENCE INCLUDING THE LETTER OF CHAIRMAN COUR DATED OCTOBER 22ND, 1968, AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS NO REASON TO MAKE A DIRECTION IN THE INSTANT COMPLAINT DIFFERENT FROM THAT WHICH IT MADE IN THE FRASER-BRACE ENGINEERING COMPANY, LIMITED COMPLAINT.

6. THE BOARD ACCORDINGLY DIRECTS THAT THE FOUNDATION COMPANY OF CANADA LIMITED MAKE THE FOLLOWING WORK ASSIGNMENTS WITH REGARD TO THE DISMANTLING OF THE "BUILT-IN-PLACE" WALL FORMS BEING USED ON THE IRON ORE RECOVERY PLANT PROJECT AT COPPER CLIFF FOR THE INTERNATIONAL NICKEL COMPANY OF CANADA:

1. THE RELEASING OF THE WEDGES OR CLAMPS AND THE REMOVAL OF THE PLYWOOD SHEETING FROM THE CONCRETE SURFACE OF THE WALL SHALL BE ASSIGNED TO MEMBERS OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486.
2. THE STRIPPING OF THE BRACES, STRONGBACKS, WALERS AND STUDS SHALL BE ASSIGNED TO MEMBERS OF THE LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION 493.

DECISION OF BOARD MEMBER R.W. TEAGLE: MARCH 7, 1969.

WITHOUT DEROGATING FROM MY DISSENTING DECISION IN THE FRASER-BRACE ENGINEERING COMPANY LIMITED COMPLAINT (BOARD FILE No. 14743(A)-68-JD), SINCE THE COMPLAINANT IS ONLY REQUESTING THE DIRECTION MADE BY THE BOARD IN THAT COMPLAINT, I CONCUR IN THE DIRECTION MADE IN THE INSTANT COMPLAINT.

DECISION OF BOARD MEMBER E. BOYER: MARCH 7, 1969.

I CONCUR IN THE DIRECTION MADE IN THE INSTANT COMPLAINT. IN VIEW OF MY DECISION OF FEBRUARY 17TH, 1969, WHEREIN THE BOARD ISSUED AN INTERIM ORDER IN THIS MATTER, I WOULD NOT IMPLEMENT THE DIRECTION PENDING THE DISPOSITION OF THE APPLICATION CONCERNING THE DISPUTE WHICH HAS BEEN MADE TO THE NATIONAL JOINT BOARD.

15748(B)-68-JD: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (RESPONDENT).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: LAURENCE ARNOLD AND P.E. GUERTIN FOR THE APPLICANT, R. KOSKIE AND A.J. FOUCault FOR THE RESPONDENT.

DECISION OF THE BOARD: MARCH 5, 1969.

1. THIS IS AN APPLICATION MADE PURSUANT TO SUBSECTION (3) OF SECTION 66 OF THE LABOUR RELATIONS ACT FOR A CEASE AND DESIST DIRECTION.

2. THE APPLICANT IS REQUESTING THAT THE BOARD ISSUE A DIRECTION THAT THE RESPONDENT CEASE AND DESIST FROM DOING ANYTHING INTENDED OR LIKELY TO INTERFERE WITH THE TERMS OF AN INTERIM ORDER ISSUED BY THE BOARD ON FEBRUARY 17TH, 1969 (BOARD FILE NO. 15650(A)-68-JD) WHICH INTERIM ORDER WAS FILED IN THE OFFICE OF THE REGISTRAR OF THE SUPREME COURT OF ONTARIO ON FEBRUARY 18TH, 1969.

3. THE INTERIM ORDER, EXCLUSIVE OF THE REASONS ISSUED BY THE BOARD READS:

THE RESPONDENT THE FOUNDATION COMPANY OF CANADA LIMITED SHALL ASSIGN THE WORK OF STRIPPING THE

"BUILT-IN-PLACE" WALL FORMS, WHICH ARE TO BE RE-USSED AGAIN, ON THE IRON ORE RECOVERY PLANT AT COPPER CLIFF FOR THE INTERNATIONAL NICKEL COMPANY OF CANADA TO MEMBERS OF THE RESPONDENT UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486.

FURTHER, THE SAID RESPONDENT COMPANY SHALL ASSIGN THE WORK OF STRIPPING THE "BUILT-IN-PLACE" WALL FORMS, WHICH ARE NOT TO BE RE-USSED AGAIN, ON THE SAID PROJECT TO MEMBERS OF THE COMPLAINANT LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493.

FURTHER, THE RESPONDENT COMPANY SHALL ASSIGN THE WORK OF MOVING, CLEANING, OILING AND CARRYING TO THE NEXT POINT OF ERECTION OF THE MATERIALS USED IN THE "BUILT-IN-PLACE" WALL FORMS ON THE SAID PROJECT TO MEMBERS OF THE COMPLAINANT TRADE UNION.

THIS ORDER SHALL BECOME EFFECTIVE FORTHWITH AND SHALL REMAIN IN EFFECT UNTIL SUCH TIME AS THE BOARD ISSUES A FURTHER DIRECTION.

4. HAVING CONSIDERED THE EVIDENCE AND REPRESENTATIONS OF THE PARTIES, THE BOARD DEEMS IT ADVISABLE IN ALL THE CIRCUMSTANCES TO MAKE THE FOLLOWING CEASE AND DESIST DIRECTION:

THE RESPONDENT LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493, ITS OFFICERS, OFFICIALS OR AGENTS SHALL CEASE AND DESIST FROM DOING ANYTHING INTENDED OR LIKELY TO INTERFERE WITH THE TERMS OF THE INTERIM ORDER OF THE BOARD DATED FEBRUARY 17TH, 1969.

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION -

CERTIFICATION

15254-68-R: LOCAL 12-L, LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION (APPLICANT) v. INLAND PUBLISHING CO., LIMITED (RESPONDENT) v. INTERNATIONAL BROTHERHOOD OF BOOKBINDERS LOCAL #28 (INTERVENER).

BEFORE: G.W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

DECISION OF THE BOARD: MARCH 5, 1969.

1. THE RESPONDENT IN THIS CASE HAS ASKED THE BOARD TO AMEND THE DESCRIPTION OF THE BARGAINING UNIT CONTAINED IN ITS DECISION AND CERTIFICATE DATED DECEMBER 11, 1968. THE REQUEST WAS MADE IN A LETTER TO THE BOARD DATED FEBRUARY 12, 1969, WHICH LETTER WAS SENT OUT TO THE OTHER PARTIES IN THE PROCEEDING FOR THEIR COMMENTS. THE COMMENTS OF THE APPLICANT ARE CONTAINED IN A LETTER TO THE BOARD DATED FEBRUARY 20, 1969 AND THOSE OF THE INTERVENER IN A LETTER DATED FEBRUARY 17, 1969. THE RESPONDENT IN TURN REPLIED TO THESE COMMENTS IN A LETTER DATED FEBRUARY 27, 1969. THE BOARD HAS GIVEN CAREFUL CONSIDERATION TO THE REPRESENTATIONS OF THE PARTIES AS SET OUT IN THEIR LETTERS.

2. THE UNIT FOUND BY THE BOARD TO BE APPROPRIATE IN ITS ORIGINAL DECISION WAS A CRAFT UNIT CONSISTING OF PHOTOLITHOGRAPHIC OFFSET PRESSMEN, THEIR APPRENTICES, FEEDERS AND HELPERS AND PHOTOLITHOGRAPHIC OFFSET CAMERAMEN, PLATEMAKERS AND THEIR APPRENTICES, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THAT RANK. THE RESPONDENT HAS REQUESTED THAT THE BOARD ADD AS EXCLUSIONS OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.

3. THERE IS NO NEED TO EXCLUDE, AND INDEED IT IS NOT THE POLICY OF THE BOARD TO EXCLUDE, OFFICE AND SALES STAFF FROM A CRAFT UNIT BECAUSE IT IS OBVIOUS THAT SUCH PERSONS ARE NOT CRAFTSMEN. IT IS ONLY THE CRAFTSMEN DESCRIBED IN THE BARGAINING UNIT WHO ARE INCLUDED THEREIN. IT IS ALSO NOT THE USUAL POLICY OF THE BOARD TO EXCLUDE "24 HOUR PEOPLE" OR STUDENTS FROM A CRAFT UNIT. IF SUCH PERSONS ARE EMPLOYED AND THEY ARE IN FACT CRAFTSMEN, THEN THEY ARE NORMALLY INCLUDED IN A CRAFT UNIT. NO ARGUMENTS HAVE BEEN ADVANCED BY THE RESPONDENT WHICH IN OUR VIEW, WOULD JUSTIFY A DEPARTURE FROM OUR USUAL POLICY IN SUCH MATTERS. THE CASE RELIED ON BY THE RESPONDENT INVOLVING THE PRESENT INTERVENER AND RESPONDENT DID NOT INVOLVE A CRAFT BARGAINING UNIT.

4. ACCORDINGLY, THE REQUEST OF THE RESPONDENT IS DENIED.

15586-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) v. STEINBERG'S LIMITED (RESPONDENT).

BEFORE: G.W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: A. LALONDE FOR THE APPLICANT; M. McKEOWN FOR THE RESPONDENT; AND I. SCOTT AND T.L. REES FOR THE RETAIL CLERKS INTERNATIONAL ASSOCIATION, COMMERCE EMPLOYEES ASSOCIATION, LOCAL 486-W.

DECISION OF THE BOARD: MARCH 21, 1969.

1. THIS IS A REQUEST BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION AND ITS LOCAL, COMMERCE EMPLOYEES ASSOCIATION, LOCAL 486-W, HEREINAFTER REFERRED TO AS "LOCAL 486-W", THAT THE BOARD RECONSIDER ITS DECISION DATED JANUARY 31ST, 1969 IN WHICH IT CERTIFIED THE APPLICANT, HEREINAFTER REFERRED TO AS "LOCAL 93", AS THE BARGAINING AGENT FOR ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THAT RANK. A HEARING WAS HELD IN CONNECTION WITH THIS REQUEST AND FULL OPPORTUNITY WAS GIVEN TO ALL PARTIES TO CALL EVIDENCE AND MAKE THEIR REPRESENTATIONS TO THE BOARD.

2. IT IS CONTENDED BY LOCAL 486-W THAT THE EMPLOYEES IN THE BARGAINING UNIT DESCRIBED ABOVE ARE IN FACT COVERED BY A COLLECTIVE AGREEMENT BETWEEN THAT LOCAL AND THE RESPONDENT COMPANY, THAT THE APPLICATION BY LOCAL 93 WAS UNTIMELY AND THAT THE BOARD SHOULD THEREFORE REVOKE ITS EARLIER DECISION. IT WAS ESTABLISHED IN EVIDENCE THAT LOCAL 486-W DOES HAVE A COLLECTIVE AGREEMENT WITH STEINBERG'S LIMITED WHICH AGREEMENT IS EFFECTIVE UNTIL SEPTEMBER 14TH, 1969. BY ARTICLE 1.01 STEINBERG'S LIMITED RECOGNIZES LOCAL 486-W "AS THE BARGAINING AGENCY FOR ALL FULL-TIME EMPLOYEES AND PART-TIME EMPLOYEES WORKING SEVENTEEN (17) HOURS OR MORE A WEEK, IN THE WORKSHOPS AND INSTALLATIONS DEPARTMENT AND IN THE STORE MAINTENANCE DEPARTMENT AT 5780 NOTRE DAME STREET EAST, MONTREAL, QUEBEC..." INCLUDED IN THE CLASSIFICATIONS COVERED BY THE AGREEMENT ARE CARPENTERS AND CARPENTERS' APPRENTICES. TWO OF THE CARPENTERS COVERED BY THE BOARD'S CERTIFICATE IN THIS CASE CAME FROM MONTREAL. THE OTHERS WERE HIRED LOCALLY. THE TWO CARPENTERS FROM MONTREAL WORK OUT OF 5780 NOTRE DAME STREET, EAST.

3. THE FIRST QUESTION TO BE DECIDED IN THE MEANING OF THE WORDS IN ARTICLE 1.01, "IN THE WORKSHOPS AND INSTALLATIONS DEPARTMENT AND IN THE STORE MAINTENANCE DEPARTMENT AT 5780 NOTRE DAME STREET EAST, MONTREAL, QUEBEC". IT IS CONTENDED BY LOCAL 93 THAT THESE WORDS CLEARLY RESTRICT THE AGREEMENT TO PERSONS WORKING AT 5780 NOTRE DAME STREET EAST, MONTREAL, AND THAT THEREFORE THE AGREEMENT CANNOT AFFECT THE RESPONDENT'S EMPLOYEES WORKING IN OTTAWA. LOCAL 486-W WAS PERMITTED TO ADDUCE EVIDENCE INDICATING THAT THESE WORDS HAD ANOTHER MEANING AND THE QUESTION IS WHETHER WE ARE ENTITLED TO CONSIDER SUCH EVIDENCE. RECENT DECISIONS IN THE COURTS SUGGEST THAT WE ARE NOT ENTITLED TO LOOK AT EXTRINSIC EVIDENCE IN ORDER TO CONSTRUE THE TERMS OF A COLLECTIVE AGREEMENT UNLESS THERE IS AN AMBIGUITY IN THE TERMS OF THE AGREEMENT IN QUESTION. IT IS OUR VIEW THAT SUCH AMBIGUITY EXISTS IN THE

PRESENT CASE, HAVING REGARD PARTICULARLY TO THE WORDS "INSTALLATIONS" AND "STORE MAINTENANCE" IN ARTICLE 1.01. THESE WORDS CERTAINLY SUGGEST THAT THE EMPLOYEES IN THESE TWO DEPARTMENTS MIGHT WELL BE REQUIRED TO LEAVE THE PREMISES AT 5780 NOTRE DAME STREET EAST IN ORDER TO MAKE INSTALLATIONS OR TO CARRY OUT STORE MAINTENANCE. THERE IS NO STORE AT THE STREET ADDRESS IN QUESTION. ACCORDINGLY, WE CONCLUDE THAT WE ARE ENTITLED TO LOOK AT THE EXTRINSIC EVIDENCE CALLED BY LOCAL 486-W.

4. THAT EVIDENCE ESTABLISHES THAT THE COLLECTIVE AGREEMENT WAS INTENDED TO APPLY TO AND HAS IN FACT BEEN APPLIED TO EMPLOYEES OF THESE TWO DEPARTMENTS WHEN WORKING THROUGHOUT THE QUEBEC DIVISION OF THE RESPONDENT COMPANY. THAT DIVISION INCLUDES THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT IN THE PROVINCE OF ONTARIO. IT SEEMS CLEAR THAT SUCH EMPLOYEES, REGARDLESS OF WHERE THEY ARE WORKING IN THE QUEBEC DIVISION, ARE PAID FROM MONTREAL, DIRECTED FROM MONTREAL AND HAVE THEIR DUES DEDUCTED BY THE RESPONDENT IN MONTREAL. THEY ARE INCLUDED IN SENIORITY LISTS REQUIRED TO BE COMPILED BY THE RESPONDENT UNDER ARTICLE 4.02 OF THE COLLECTIVE AGREEMENT. GRIEVANCES FOR EMPLOYEES OF THIS CATEGORY HAVE BEEN PROCESSED UNDER THE COLLECTIVE AGREEMENT. WE HAVE NO HESITATION, THEREFORE, IN FINDING THAT THE TWO EMPLOYEES FROM MONTREAL WHO WERE INCLUDED ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT COMPANY IN THIS CASE WERE COVERED BY THE COLLECTIVE AGREEMENT BETWEEN LOCAL 486-W AND STEINBERG'S LIMITED.

5. THE EVIDENCE, HOWEVER, FALLS FAR SHORT OF ESTABLISHING ANY PRACTICE WITH RESPECT TO EMPLOYEES HIRED LOCALLY. THERE IS NO EVIDENCE AS TO HOW THEY WERE HIRED, BY WHOM, HOW THEY WERE PAID, WHETHER DUES WERE DEDUCTED, ETC. ON THE EVIDENCE BEFORE US, THEREFORE, WE ARE NOT PREPARED TO FIND THAT THE EMPLOYEES ON THE LIST IN THIS CASE WHO WERE HIRED LOCALLY ARE COVERED BY THE TERMS OF THE SAID COLLECTIVE AGREEMENT.

6. WE SHOULD PERHAPS ADD THAT THERE ARE THREE EMPLOYEES OF THE TWO DEPARTMENTS IN QUESTION WORKING ON A FULL-TIME BASIS IN THE OTTAWA AREA. THEY WERE NOT INCLUDED ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT, BUT THE EVIDENCE ESTABLISHED THAT THESE EMPLOYEES ARE ALSO COVERED BY THE AGREEMENT BETWEEN LOCAL 486-W AND THE RESPONDENT COMPANY.

7. IN THE RESULT, THE NAMES OF THE TWO CARPENTERS FROM MONTREAL WILL BE REMOVED FROM THE LIST OF EMPLOYEES FILED BY THE RESPONDENT. THIS STILL LEAVES THE APPLICANT, LOCAL 93, IN A CERTIFIABLE POSITION IN SO FAR AS THE CARPENTERS HIRED LOCALLY ARE CONCERNED. THERE IS THUS NO NEED TO REVOKE OUR PREVIOUS DECISION OR CERTIFICATE. HOWEVER, IT IS NECESSARY TO VARY THE DESCRIPTION OF THE BARGAINING UNIT. ACCORDINGLY, THE LAST SENTENCE OF PARAGRAPH 6 OF THE BOARD'S DECISION DATED JANUARY 31st, 1969, IS DELETED AND THE FOLLOWING SUBSTITUTED THEREFOR:

THE BOARD THEREFORE FURTHER FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN RETAIL CLERKS INTERNATIONAL ASSOCIATION, COMMERCE EMPLOYEES ASSOCIATION, LOCAL 486-W AND THE RESPONDENT, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

8. THE PARTIES ARE DIRECTED TO RETURN THE CERTIFICATE DATED JANUARY 31, 1969 AND COPIES THEREOF TO THE REGISTRAR FOR AMENDMENT IN ACCORDANCE WITH THIS DECISION.

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION -

PROSECUTION

15487-68-U: BRAMPTON TRUCK DRIVERS ASSOCIATION, LOCAL NO. 54, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. BRAMPTON TRANSPORT LIMITED (RESPONDENT).

BEFORE: J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: W.I.C. BINNIE FOR THE APPLICANT, T.F. STORIE AND W.P. JOHNSTON FOR THE RESPONDENT.

DECISION OF THE BOARD: MARCH 10, 1969.

1. THE BOARD IN ITS DECISION DATED JANUARY 23RD, 1969, DIRECTED THAT THIS MATTER BE ADJOURNED TO A DATE TO BE FIXED BY THE REGISTRAR PENDING A DECISION BY THE BOARD IN AN APPLICATION UNDER SECTION 79(2) OF THE ACT INVOLVING THE SAME PARTIES IN BOARD FILE 15486-68-M.

2. THE APPLICANT IN THIS MATTER HAS REQUESTED THE BOARD TO AMEND ITS DECISION DATED JANUARY 23RD, 1969 BY DELETING ITS DIRECTION THAT THIS MATTER BE ADJOURNED ON THE GROUNDS THAT IT WOULD APPEAR THAT MORE THAN SIX MONTHS WILL HAVE ELAPSED FROM THE DATE OF CERTAIN EVENTS COMPLAINED OF AND THE DATE THAT THIS MATTER WOULD BE HEARD IF THE BOARD AWAITS THE DECISION IN BOARD FILE 15486-68-M.

3. SINCE IT COULD NOT BE REASONABLY ANTICIPATED WHEN THIS MATTER FIRST CAME ON FOR HEARING THAT THE EXAMINER'S INQUIRY IN THE SECTION 79(2) CASE REFERRED TO ABOVE WOULD BE AS EXTENSIVE AS IT NOW APPEARS TO BE, THE BOARD IS OF OPINION THAT THE APPLICANT

SHOULD HAVE AN OPPORTUNITY TO PROCEED WITH THE MERITS OF THIS APPLICATION AND MAKE WHATEVER ARGUMENT IS AVAILABLE TO IT ON THE BASIS OF THE EVIDENCE WHICH CAN BE ADDUCED.

4. FOR THE REASONS SET OUT ABOVE, THE BOARD THEREFORE CONSIDERS IT ADVISABLE TO VARY ITS DECISION DATED JANUARY 23RD, 1969 IN THIS MATTER BY DELETING THEREFROM PARAGRAPH 1 THEREOF. THE BOARD THEREFORE DIRECTS THAT THE REGISTRAR LIST THIS MATTER FOR CONTINUATION OF HEARING SUBJECT TO THE PROVISIONS CONTAINED IN ITEMS 2 AND 3 OF THE BOARD'S DECISION OF JANUARY 23RD, 1969 IN THIS MATTER.

15488-68-U: BRAMPTON TRUCK DRIVERS ASSOCIATION, LOCAL NO. 54,
AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA
(APPLICANT) v. BRAMPTON TRANSPORT LIMITED (RESPONDENT).

BEFORE: J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: W.I.C. BINNIE FOR THE APPLICANT,
T.F. STORIE AND W.P. JOHNSTON FOR THE RESPONDENT.

DECISION OF THE BOARD: MARCH 10, 1969.

1. THE BOARD IN ITS DECISION DATED JANUARY 23RD, 1969, DIRECTED THAT THIS MATTER BE ADJOURNED TO A DATE TO BE FIXED BY THE REGISTRAR PENDING A DECISION BY THE BOARD IN AN APPLICATION UNDER SECTION 79(2) OF THE ACT INVOLVING THE SAME PARTIES IN BOARD FILE 15486-68-M.

2. THE APPLICANT IN THIS MATTER HAS REQUESTED THE BOARD TO AMEND ITS DECISION DATED JANUARY 23RD, 1969 BY DELETING ITS DIRECTION THAT THIS MATTER BE ADJOURNED ON THE GROUNDS THAT IT WOULD APPEAR THAT MORE THAN SIX MONTHS WILL HAVE ELAPSED FROM THE DATE OF CERTAIN EVENTS COMPLAINED OF AND THE DATE THAT THIS MATTER WOULD BE HEARD IF THE BOARD AWAITS THE DECISION IN BOARD FILE 15486-68-M.

3. SINCE IT COULD NOT BE REASONABLE ANTICIPATED WHEN THIS MATTER FIRST CAME ON FOR HEARING THAT THE EXAMINER'S INQUIRY IN THE SECTION 79(2) CASE REFERRED TO ABOVE WOULD BE AS EXTENSIVE AS IT NOW APPEARS TO BE, THE BOARD IS OF OPINION THAT THE APPLICANT SHOULD HAVE AN OPPORTUNITY TO PROCEED WITH THE MERITS OF THIS APPLICATION AND MAKE WHATEVER ARGUMENT IS AVAILABLE TO IT ON THE BASIS OF THE EVIDENCE WHICH CAN BE ADDUCED.

4. FOR THE REASONS SET OUT ABOVE, THE BOARD THEREFORE CONSIDERS IT ADVISABLE TO VARY ITS DECISION DATED JANUARY 23RD, 1969 IN THIS MATTER BY DELETING THEREFROM PARAGRAPH 1 THEREOF. THE BOARD THEREFORE DIRECTS THAT THE REGISTRAR LIST THIS MATTER FOR CONTINUATION OF HEARING SUBJECT TO THE PROVISIONS CONTAINED IN ITEMS 2 AND 3 OF THE BOARD'S DECISION OF JANUARY 23RD, 1969 IN THIS MATTER.

INDEXED ENDORSEMENT - RECONSIDERATION OF BOARD'S DECISION -

SECTION 65

15309-68-U: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (COMPLAINANT) v. ITT CANADA LTD. (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS P.J. O'KEEFFE AND J.E.C. ROBINSON.

DECISION OF VICE-CHAIRMAN, RORY F. EGAN AND BOARD MEMBER J.E.C. ROBINSON: MARCH 18, 1969.

1. BY LETTER DATED FEBRUARY 26, 1969, THE COMPLAINANT REQUESTED THE BOARD TO RECONSIDER ITS DECISION OF FEBRUARY 24, 1969.

2. THE RELEVANT PORTION OF THE REQUEST READS AS FOLLOWS:

IT COULD BE CONCLUDED THAT UP TO THIS POINT THE WRITER IS DEALING WITH MATTERS OF OPINION, NOW I WISH TO DEAL WITH A POINT OF FACT.

SINCE THE MAJORITY DECISION HAS SEEN FIT TO IGNORE A GOOD DEAL OF THE EVIDENCE WE ARE ENTITLED TO CONCLUDE THAT THEY PLACED CONSIDERABLE EMPHASIS ON THOSE SECTIONS OF THE EVIDENCE WHICH THEY UTILIZE AND/OR QUOTE FROM.

PARAGRAPH 8, LAST SENTENCE OF THE MAJORITY REPORT READS

"THE COMPANY HAD HOPED TO HIRE PALLISTER AT \$2.00 PER HOUR BUT THE EVIDENCE IS THAT PALLISTER WOULD NOT ACCEPT THAT RATE AND IT WAS NEGOTIATED UPWARDS."

I SUBMIT THAT NO SUCH EVIDENCE WAS PRESENTED TO THE BOARD. ON THE CONTRARY, I HAVE CHECKED MY NOTES AND FIND THAT \$2.00 AN HOUR WAS PAID TO PALLISTER. FURTHERMORE, AN EXHIBIT WAS FILED BY THE RESPONDENT COMPANY

SHOWING THAT \$2.00 AN HOUR WAS PAID TO PALLISTER. FINALLY, SINCE A GOOD DEAL TURNS ON THE WAGE PAID TO PALLISTER BY THE COMPANY INSOFAR AS THE MAJORITY BOARD DECISION IS CONCERNED, THE WRITER IS PREPARED TO SUBPOENA A WITNESS OR WITNESSES WHO WILL TESTIFY TO THIS FACT.

SINCE THE BOARD IN THEIR MAJORITY HAVE MADE A BLATANT ERROR REGARDING PALLISTER'S WAGE, WHICH COULD AND WE SUGGEST SHOULD, AFFECT THE BOARD'S DECISION IN THIS MATTER, WE ARE ASKING THAT THIS COMMUNICATION BE TREATED AS A REQUEST UNDER SECTION 79(1) OF THE LABOUR RELATIONS ACT, TO HAVE THE BOARD RECONSIDER THEIR DECISION IN THIS MATTER.

3. IN DEALING WITH THE REQUEST FOR REVIEW, WE DO NOT WISH TO EXAGGERATE THE IMPORTANCE OF THE SPECIFIC MATTER RAISED BEYOND WHAT WE HAVE CONSIDERED TO BE ITS PROPER PROPORTIONS IN THE OVERALL CONSIDERATIONS DEALT WITH BY THE BOARD IN ITS DECISION. HOWEVER, THE VERY NATURE OF THE ALLEGATION MAKES IT NECESSARY TO DEAL WITH IT AT SOME LENGTH.

4. THERE WERE FILED, BY THE COMPANY, AT THE HEARING TWO COMPANY FORMS ENTITLED "PERSONNEL REQUISITION". THEY EACH BEAR A SERIAL NUMBER INDICATING THE SEQUENCE OF FILING. REQUISITION NUMBER 68.189 IS DATED 24 SEPTEMBER, 1968 AND WAS ISSUED BY THE MANUFACTURING/ASSEMBLY DEPARTMENT. THE CLASSIFICATION REQUIRED IS SHOWN AS BEING THAT OF A MACHINE MAINTENANCE MAN TO BE HIRED AS A REPLACEMENT. UNDER THE HEADING "SPECIAL QUALIFICATIONS AND EXPERIENCE REQUIRED", THIS REQUISITION READS:

"SHOULD HAVE SOME PREVIOUS EXPERIENCE IN FABRICATION OR MACHINE SHOP EQUIPMENT IN ORDER TO DEVELOP AN APPRECIATION OF MACHINE MAINTENANCE."

5. THE SECOND REQUISITION BEARS SERIAL NUMBER 68,195 AND IS DATED 9-26-68. IT WAS ISSUED BY THE MAINTENANCE DEPARTMENT. THE CLASSIFICATION REQUIRED WAS THAT OF A LABOURER TO BE HIRED AS "TEMPORARY". THE QUALIFICATIONS ARE NOT FILLED OUT, BUT UNDER THE HEADING "REMARKS" APPEARS THE FOLLOWING:

"REQUIRED TO ASSIST MAINTENANCE MAN TO DO ROUGH CARPENTRY WORK."

6. THERE IS NO QUESTION THAT HACK WAS HIRED TO FULFIL THE LATTER REQUISITION IN THE MAINTENANCE DEPARTMENT. IT WAS THE COMPANY'S CONTENTION THAT PALLISTER WAS HIRED TO FULFIL THE WHOLLY DIFFERENT REQUIREMENTS OF THE REQUISITION ISSUED BY THE MANUFACTURING/ASSEMBLY DEPARTMENT. THE UNION CONTENDED OTHERWISE, AS NOTED IN THE AWARD.

7. IN ADDITION TO THE REQUISITIONS, THERE WERE ALSO FILED, BY THE COMPANY, TWO FORMS HEADED "STATUS OR SALARY CHANGE". THE ONLY POINT OFNOTE ABOUT THESE DOCUMENTS, ONE OF WHICH RELATES TO HACK AND THE OTHER TO PALLISTER, IS THAT UNDER THE HEADING "PRESENT SALARY" THERE IS SHOWN, ON EACH, THE AMOUNT OF \$2.00.

8. THAT WAS THE STATE OF THE DOCUMENTARY EVIDENCE WITH RESPECT TO THE TWO JOBS AT THE CONCLUSION OF THE CROSS EXAMINATION OF COMPANY WITNESS R. QUEVILLON THROUGH WHOM THEY HAD BEEN INTRODUCED. THAT IS TO SAY (LEAVING ASIDE FOR THE MOMENT THE OTHER EVIDENCE) THERE WAS, ON PAPER, A DISTINCTION BETWEEN THE JOB REQUIREMENTS, THE DEPARTMENTS CONCERNED AND THE DATES OF ISSUANCE, BUT AN IDENTICAL AMOUNT SHOWN AS THE JOB RATE FOR THE TWO POSITIONS. THE UNION REPRESENTATIVE DID NOT PURSUE THE MATTER ANY FURTHER. IT APPEARED FROM COMMENTS MADE BY HIM, TO WHICH REFERENCE WILL BE MADE LATER, THAT HE PURPOSELY ELECTED TO LEAVE THE EVIDENCE IN THAT STATE IN ORDER TO BE ABLE TO SUGGEST CERTAIN INFERENCES THAT MIGHT BE DRAWN THEREFROM.

9. BOARD MEMBER O'KEEFFE, HOWEVER, DID DIRECT QUESTIONS TO THE WITNESS WITH RESPECT TO THE APPARENT DISCREPANCY IN THE REQUIREMENTS AND THE SIMILARITY IN RATES. THE WITNESS IMMEDIATELY AND WITHOUT EQUIVOCATION ANSWERED THAT PALLISTER HAD QUERIED THE RATE AND THAT IT WAS THEN RENEGOTIATED. THE MATTER AGAIN WAS NOT PURSUED FURTHER. HOWEVER, MR. RUSSELL, FOR THE UNION, STATED AT THIS JUNCTURE THAT HE HAD INTENDED TO USE THE POINT WITH RESPECT TO THE SIMILAR RATES IN HIS ARGUMENT. APPARENTLY HE FELT HE HAD BEEN DEPRIVED OF THE ARGUMENT BY THE WITNESS'S REPLY. IN ANY EVENT, NO REFERENCE WAS MADE TO THAT SPECIFIC POINT IN THE FINAL ARGUMENT OF THE COMPLAINANT.

10. THE MAJORITY OF THE BOARD ACCEPTED THE WITNESS'S REPLY WHICH WENT UNCHALLENGED AND IT IS THIS EVIDENCE TO WHICH THE MAJORITY OF THE BOARD REFERS IN THAT PORTION OF ITS DECISION MENTIONED IN THE REQUEST FOR REVIEW.

11. IN VIEW OF THE FOREGOING, THE BOARD DOES NOT CONSIDER IT ADVISABLE TO RECONSIDER, VARY OR REVOKE ITS DECISION DATED FEBRUARY 24, 1969.

DECISION OF BOARD MEMBER P.J. O'KEEFFE:

THE REQUEST OF THE APPLICANT FOR RECONSIDERATION IS DIRECTED TO THE DECISION OF THE MAJORITY DATED FEBRUARY 24, 1969. THEREFORE, I DO NOT WISH TO COMMENT ON THIS REQUEST EXCEPT TO DIRECT ATTENTION TO MY DISSENTING DECISION OF THE SAME DATE.

WITH REGARD TO PARAGRAPH 9 OF THE INSTANT DECISION, I WISH TO GO ON RECORD TO THE EFFECT THAT I HAVE NO RECOLLECTION OF THE SPECIFIC QUESTION ANSWER AND STATEMENT RELATED THEREIN.

EXCERPTS FROM DECISIONS IN CONSTRUCTION INDUSTRY CASES

15436-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) v. RANEY BRADY (A PARTNERSHIP OF G. J. RANEY LIMITED AND C. T. BRADY LIMITED) (RESPONDENT).

4. THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER IS THAT THE RESPONDENT HIRED TWO MEMBERS OF THE APPLICANT, METRO DREBIT AND NATHAN KANE, FOR THE PURPOSE OF FILLING OUT A CREW TO DISMANTLE TWO BAILEY BRIDGES AT THE SITE WHERE THE LEASIDE BRIDGE IS BEING REBUILT. ON DECEMBER 5TH, THE CREW WHICH WORKED ON THE DISMANTLING OF THE BAILEY BRIDGES WAS COMPOSED OF JOHN SULLIVAN, THE JOB SUPERINTENDENT, PETER BRADY, A LABOURERS' FOREMAN, ANTHONY CARRABAU, A CARPENTER, JOHN STUDNEY, WHO WAS NORMALLY EMPLOYED DURING A VARIETY OF ODD JOBS INCLUDING DRIVING A TRUCK AND MAINTAINING MACHINES, AND THE TWO IRONWORKERS. ALL MEMBERS OF THE CREW WERE PERFORMING THE SAME WORK, THAT IS, RELEASING WITH A SLEDGE HAMMER THE WEDGES WHICH HOLD THE SECTIONS OF THE BRIDGES TOGETHER.

5. ON DECEMBER 6TH, THE DATE OF THE MAKING OF THE INSTANT APPLICATION, SULLIVAN, THE JOB SUPERINTENDENT, DID NOT ASSIGN ANY OF THE EMPLOYEES OF THE RESPONDENT TO WORK ON THE DISMANTLING OF THE EMPLOYEES OF THE RESPONDENT TO WORK ON THE DISMANTLING OF THE BAILEY BRIDGES. ACCORDING TO SULLIVAN, DREBIT AND KANE REPORTED TO WORK ON DECEMBER 6TH AND WERE PAID TWO HOURS "REPORTING TIME". TO SULLIVAN'S KNOWLEDGE, NEITHER DREBIT NOR KANE DID ANY WORK ON THAT DAY. ACCORDING TO DREBIT AND KANE, WHEN THEY CAME TO WORK ON THE MORNING OF DECEMBER 6TH, NO MORE BRACING OR PINS COULD BE REMOVED FROM THE BRIDGE BEFORE A CRANE OPERATOR REMOVED A SECTION OF THE BRIDGE. THEIR EVIDENCE IS, HOWEVER, THAT THEY GATHERED UP SOME NUTS, BOLTS, PINS AND BEAMS WHICH THEY PLACED IN A PILE PRIOR TO LEAVING THE SITE.

6. AS HAS BEEN MENTIONED, THE TWO IRONWORKERS, DREBIT AND KANE, WERE HIRED BY THE RESPONDENT FOR THE SOLE PURPOSE OF ASSISTING IN THE DISMANTLING OF TWO BAILEY BRIDGES. ON DECEMBER 6TH, 1968, THE DATE OF THE MAKING OF THE APPLICATION, THE RESPONDENT ASSIGNED NO EMPLOYEES, WHICH INCLUDE DREBIT AND KANE, TO DO THIS TYPE OF WORK. FURTHER, BASED ON DREBIT'S AND KANE'S OWN EVIDENCE, IT CANNOT TRULY BE SAID THAT SUCH WORK AS THEY DID DO ON DECEMBER 6TH, ON THEIR OWN INITIATIVE, AMOUNTED TO DISMANTLING WORK.

7. FOR PURPOSES OF THIS APPLICATION, WHICH WAS MADE UNDER THE CONSTRUCTION INDUSTRY SECTIONS OF THE ACT, THE RELEVANT DATE

FOR DETERMINING THE MEMBERSHIP POSITION OF THE APPLICANT IS THE DATE OF THE MAKING OF THE APPLICATION. ON THAT DATE, WE FIND THAT THERE WERE NO EMPLOYEES OF THE RESPONDENT AT WORK WHO WOULD FALL WITHIN THE SCOPE OF ANY BARGAINING UNIT WHICH, IN THIS APPLICATION, WOULD BE APPROPRIATE FOR COLLECTIVE BARGAINING (SEE U. R. EVANS CONSTRUCTION LIMITED, BOARD FILE NO. 15430-68-R).

8. IN THESE CIRCUMSTANCES, THE APPLICATION IS DISMISSED.
(MARCH 3, 1969).

15689-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 721 (APPLICANT) v. ARCAN EASTERN LTD. (RESPONDENT).

8. THE RESPONDENT IS ENGAGED IN A MANUFACTURING OPERATION AND USUALLY SUBCONTRACTS OUT ITS INSTALLATION WORK. ON OCCASION, AS IN THE PRESENT CASE, IT WILL HIRE TEMPORARY EMPLOYEES TO DO SUCH WORK. THE EMPLOYEES IN QUESTION COMPLETED THE JOB TWO DAYS AFTER THE DATE OF THE MAKING OF THE APPLICATION. THE RESPONDENT TAKES THE POSITION THAT THE APPLICATION IS "INCORRECT" AND HAS RESULTED FROM A "MISUNDERSTANDING OF OUR POSITION".

HOWEVER, THE APPLICATION IS ONE FALLING UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT AND IN SUCH CASES THE BOARD HAS CONSISTENTLY TAKEN THE POSITION THAT IN CIRCUMSTANCES SUCH AS THE PRESENT IT WILL ISSUE A CERTIFICATE, IF THE APPLICATION IS OTHERWISE IN ORDER. IN OUR VIEW, THE VARIOUS MATTERS RAISED ARE QUESTIONS WHICH CAN BE DEALT WITH IN NEGOTIATION BETWEEN THE PARTIES FOLLOWING CERTIFICATION. SEE TRAUGOTT CONSTRUCTION LIMITED CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY 1967, P. 920 AND J.G. FITZPATRICK CONSTRUCTION LIMITED CASE, BOARD FILE No. 15350-68-R.

IT IS FURTHER POINTED OUT THAT THE APPLICATION DEALS ONLY WITH IRON WORKERS IN THE CONSTRUCTION INDUSTRY AND WILL NOT AFFECT THE OTHER OPERATIONS OF THE RESPONDENT.

(MARCH 7, 1969).

15775-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) v. BEMAC PROTECTIVE COATINGS LTD. (RESPONDENT) v. LOCAL 172 OF THE OPERATIVE PLASTERERS' AND CEMENT MASON'S' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (INTERVENER).

7. THE INTERVENER HAS A COLLECTIVE AGREEMENT WITH THE RESPONDENT IN EFFECT UNTIL APRIL 30TH, 1969. THE BARGAINING UNIT IN THAT AGREEMENT IS THE SAME AS THAT CONTAINED IN AN EARLIER DECISION

OF THE BOARD DATED JUNE 2, 1966 INVOLVING THE PRESENT RESPONDENT. THE GEOGRAPHIC AREA IN THAT BARGAINING UNIT DIFFERS FROM THAT NORMALLY GRANTED BY THE BOARD FOR THE REASONS OUTLINED IN OUR EARLIER DECISION. IN OUR VIEW, THE SAME CONSIDERATIONS APPLY IN THIS CASE, AND ACCORDINGLY THE BOARD FURTHER FINDS THAT ALL EMPLOYEES IN THE EMPLOY OF THE RESPONDENT WORKING AT OR OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, OFFICE STAFF, WATCHMEN AND DRAFTING PERSONNEL, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

(MARCH 20, 1969).

15847-68-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 1687 (APPLICANT) v. DERRO ELECTRIC CO. (RESPONDENT).

7. THE RESPONDENT, ALTHOUGH NOT REQUESTING A HEARING, MADE CERTAIN SUBMISSIONS IN ITS REPLY RESPECTING ITS FINANCIAL POSITION. THIS IS NOT A MATTER WHICH THE BOARD TAKES INTO CONSIDERATION IN DETERMINING WHETHER A TRADE UNION SHOULD BE CERTIFIED. IT IS IN OUR VIEW MORE PROPERLY A MATTER FOR COLLECTIVE BARGAINING ONCE A CERTIFICATE IS ISSUED. FOR THIS REASON, THE COPIES OF THE DOCUMENTS ACCOMPANYING THE REPLY WERE NOT FORWARDED TO THE APPLICANT. THE REGISTRAR IS DIRECTED TO RETURN THESE DOCUMENTS TO THE RESPONDENT.

(MARCH 20, 1969).

STATISTICAL TABLES FOR MARCH 1969

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

		NUMBER FILED		
	MARCH 1969	1ST 1968-69	12 MONTHS OF FISCAL YEAR 1968-69	1967-68
I.	CERTIFICATION	114	1037	942
II.	DECLARATION TERMINATING BARGAINING RIGHTS	4	64	90
III.	DECLARATION OF SUCCESSOR STATUS	28	41	27
IV.	DECLARATION THAT STRIKE UNLAWFUL	2	36	37
V.	DECLARATION THAT LOCK- OUT UNLAWFUL	-	7	13
VI.	CONSENT TO PROSECUTE	13	103	104
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	31	184	188
VIII.	MISCELLANEOUS	21	94	75
	TOTAL	<u>213</u>	<u>1566</u>	<u>1476</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

		NUMBER		
	MARCH 1969	1ST 1968-69	12 MONTHS OF FISCAL YEAR 1968-69	1967-68
	HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	106	1052	880

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS
BOARD BY MAJOR TYPES

		NUMBER DISPOSED OF	
	MARCH 1969	1ST 12 MONTHS 1968-69	FISCAL YR. 1967-68
I. CERTIFICATION	107	1032	920
II. DECLARATION TERMINATING BARGAINING RIGHTS	8	70	91
III. DECLARATION OF SUCCESSOR STATUS	14	31	22
IV. DECLARATION THAT STRIKE UNLAWFUL	2	38	34
V. DECLARATION THAT LOCK- OUT UNLAWFUL	-	6	13
VI. CONSENT TO PROSECUTE	5	103	95
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	19	190	175
VIII. MISCELLANEOUS	7	73	71
TOTAL	<u>162</u>	<u>1543</u>	<u>1421</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS
BOARD BY TYPE AND DISPOSITION

	NUMBER OF APPLICATIONS			NUMBER OF EMPLOYEES*		
	MARCH 1969	1ST 12 MTHS 1968-69	FISCAL YR. 1967-68	MARCH 1969	1ST 12 MTHS 1968-69	FISCAL YR. 1967-68
I. CERTIFICATION						
GRANTED	70	696	642	3467	23046	25953
DISMISSED	21	231	202	927	8927	11339
WITHDRAWN	<u>16</u>	<u>105</u>	<u>76</u>	<u>276</u>	<u>1991</u>	<u>1698</u>
TOTAL	<u>107</u>	<u>1032</u>	<u>920</u>	<u>4670</u>	<u>33964</u>	<u>38990</u>
II. TERMINATION OF BARGAINING RIGHTS						
GRANTED	5	36	42	127	1327	1081
DISMISSED	3	25	46	55	635	1033
WITHDRAWN	<u>—</u>	<u>9</u>	<u>3</u>	<u>—</u>	<u>212</u>	<u>53</u>
TOTAL	<u>8</u>	<u>70</u>	<u>91</u>	<u>182</u>	<u>2174</u>	<u>2167</u>

*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION (CONTINUED)

	MARCH 1969	NUMBER OF APPLICATIONS	
		1ST 12 MONTHS 1968-69	FISCAL YR. 1967-68
III. <u>DECLARATION THAT STRIKE</u> <u>UNLAWFUL</u>			
GRANTED	-	3	3
DISMISSED	-	2	3
WITHDRAWN	<u>2</u>	<u>33</u>	<u>28</u>
TOTAL	<u><u>2</u></u>	<u><u>38</u></u>	<u><u>34</u></u>
IV. <u>DECLARATION THAT LOCKOUT</u> <u>UNLAWFUL</u>			
GRANTED	-	-	1
DISMISSED	-	3	1
WITHDRAWN	-	<u>3</u>	<u>11</u>
TOTAL	<u><u>-</u></u>	<u><u>6</u></u>	<u><u>13</u></u>
V. <u>CONSENT TO PROSECUTE</u>			
GRANTED	3	28	7
DISMISSED	-	13	12
WITHDRAWN	<u>2</u>	<u>62</u>	<u>76</u>
TOTAL	<u><u>5</u></u>	<u><u>103</u></u>	<u><u>95</u></u>
VI. <u>COMPLAINT OF UNFAIR</u> <u>PRACTICE IN EMPLOYMENT</u> <u>(SECTION 65)</u>			
GRANTED	1	12	26
DISMISSED	2	46	47
WITHDRAWN	<u>16</u>	<u>132</u>	<u>104</u>
TOTAL	<u><u>19</u></u>	<u><u>190</u></u>	<u><u>177</u></u>

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

MARCH 1969	NUMBER OF VOTES		
	1ST 12 MTHS 1968-69	FISCAL YR. 1967-68	

CERTIFICATION AFTER VOTE*

PRE-HEARING VOTE	4	17	20
POST-HEARING VOTE	4	45	46
BALLOTS NOT COUNTED	-	-	-

DISMISSED AFTER VOTE

PRE-HEARING VOTE	1	8	13
POST-HEARING VOTE	3	39	38
BALLOTS NOT COUNTED	-	1	3
TOTAL	<u>12</u>	<u>110</u>	<u>120</u>

* INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY
THE ONTARIO LABOUR RELATIONS BOARD

MARCH 1969	NUMBER OF VOTES		
	1ST 12 MTHS 1968-69	FISCAL YR. 1967-69	
*RESPONDENT UNION SUCCESSFUL	3	7	1
RESPONDENT UNION UNSUCCESSFUL	5	28	21
TOTAL	<u>8</u>	<u>35</u>	<u>22</u>

* IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

JUL, 1969



ONTARIO

Monthly Report

TARIO LABOUR RELATIONS BOARD



CASE LISTINGS APRIL 1969

PAGE

1.	CERTIFICATION	
	(A) BARGAINING AGENTS CERTIFIED	1
	(B) APPLICATIONS DISMISSED	17
	(C) APPLICATIONS WITHDRAWN	22
2.	APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS	23
3.	APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS	24
4.	APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL	25
5.	APPLICATION FOR DECLARATION THAT LOCK-OUT UNLAWFUL	25
6.	APPLICATIONS FOR CONSENT TO PROSECUTE	26
7.	COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE)	28
8.	APPLICATION FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT	29
9.	APPLICATION UNDER SECTION 47A	29
10.	REFERENCE TO BOARD PURSUANT TO SECTION 79A	30
11.	JURISDICTIONAL DISPUTES	30
12.	APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION	31
13.	INDEXED ENDORSEMENTS	

CERTIFICATION

14690-68-R:	THE WELLESLEY HOSPITAL	31
15111-68-R:	PARNELL FOODS LIMITED	38
15148-68-R:	PARNELL FOODS LIMITED	38
15496-68-R:	CAROUSEL INN OF LONDON LIMITED	46
15516-68-R:	LORD & BURHAM CO., LIMITED	49
15652-68-R:	ALCAN UNIVERSAL HOMES DIVISION OF ALCAN DESIGN HOMES LIMITED	55
15714-68-R:	REIMER EXPRESS LINES LIMITED	58
15731-68-R:	PEARL LAUNDRY CO. LIMITED	62
15856-68-R:	ZACHARY DE VUONO LIMITED	71
15936-68-R:	WILLIAM NEILSON LIMITED	76
15937-68-R:	WILLIAM NEILSON LIMITED	79
16030-69-R:	NORTHERN FLOORING CO. (QUEBEC) LTD	80

TERMINATION

14937-68-R:	GORMAN ECKERT AND COMPANY LIMITED	81
15838-68-R:	BRUNSWICK OF CANADA LIMITED	93

TERMINATION (CONTINUED)

15957-69-R:	HART CHEMICAL LIMITED	95
15960-69-R:	SERVICE EMPLOYEES UNION, LOCAL 204	96
16002-69-R:	INTERCHEM PRESSTITE LIMITED	98

PROSECUTIONS

15382-68-U:	NORTH AMERICAN PLASTICS CO. LIMITED, MICHAEL LADNEY, WILLIAM LATHAM, PETER EMANUEL AND FRANK CORCORAN	100
15487-68-U:	BRAMPTON TRANSPORT LIMITED	105
15488-68-U:	BRAMPTON TRANSPORT LIMITED	107
15651-68-U:	FORMFIT INTERNATIONAL, S.A.	108
15829-68-U:	FRASER-BRACE ENGINEERING COMPANY LIMITED	116
15946-68-U:	HOAR TRANSPORT COMPANY LIMITED	117
15947-68-U:	HOAR TRANSPORT COMPANY LIMITED	119
15948-68-U:	HOAR TRANSPORT COMPANY LIMITED	120
15949-68-U:	STAR TRANSFER LIMITED	120
15950-68-U:	STAR TRANSFER LIMITED	121
15952-68-U:	STAR TRANSFER LIMITED	122

SECTION 39(3)

15706-68-R:	INTERNATIONAL UNION, UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, AFFILIATED WITH THE AFL-CIO AND THE CLC, AND ITS LOCALS 168 AND 719, AND STANDARD PRODUCTS (CANADA) LIMITED	123
-------------	---	-----

SECTION 47(A)

15741-68-M:	TIMMINS BOARD OF EDUCATION AND THE TIMMINS HIGH SCHOOL BOARD	125
-------------	---	-----

SECTION 79A

15726-68-M:	DAUGULIS COMPANY LIMITED	128
15874-68-M:	V. K. MASON CONSTRUCTION LTD.	131
15906-68-M:	ELGIN CONSTRUCTION CO. LIMITED	134
15984-69-M:	CANADIAN PITTSBURGH INDUSTRIES LIMITED HENDERSON GLASS (LAKEHEAD) LIMITED PILKINGTON BROTHERS (CANADA) LIMITED	135

JURISDICTIONAL DISPUTES

14920(A)-68-JD:	BEER PRECAST CONCRETE LIMITED	137
16086(A)-69-JD:	OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL 124 AND BEMAC PROTECTIVE COATING LIMITED	138
16086(B)-69-JD:	OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 124	139

RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION	
15539-68-R: SPURRELL'S I.G.A.	140
15689-68-R: ARCAN EASTERN LTD.	141
15692-68-R: FORMALL LIMITED	143
15765-68-R: K.V.C. ELECTRIC LIMITED	143
14. EXCERPTS FROM DECISIONS IN CONSTRUCTION INDUSTRY CASES	145

BOARD STATISTICS

NOTE: BEGINNING WITH THE FISCAL YEAR APRIL 1, 1969 - MARCH 31, 1970,
STATISTICS OF THE OPERATIONS OF THE ONTARIO LABOUR RELATIONS BOARD WILL
BE PUBLISHED ON A QUARTERLY BASIS INSTEAD OF MONTHLY AND WILL APPEAR
IN THE JUNE, SEPTEMBER, DECEMBER AND MARCH ISSUES OF THE REPORT.

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING APRIL 1969

BARGAINING AGENTS CERTIFIED DURING APRIL

NO VOTE CONDUCTED

15053-68-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) v. DOMINION CELLULOSE LIMITED (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT AT ITS PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT THE ASSISTANT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF ASSISTANT CHIEF ENGINEER." (6 EMPLOYEES IN THE UNIT).

15111-68-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. PARNELL FOODS LIMITED (RESPONDENT).

- AND -

15148-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL-CIO-CLC (APPLICANT) v. PARNELL FOODS LIMITED (RESPONDENT) v. MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (70 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 38).

15504-68-R: MEDICAL TECHNOLOGISTS & TECHNICIANS ASSOCIATION OF THE OTTAWA CIVIC HOSPITAL (APPLICANT) v. TRUSTEES OF THE OTTAWA CIVIC HOSPITAL (RESPONDENT) v. NURSES' ASSOCIATION OTTAWA CIVIC HOSPITAL (INTERVENER).

UNIT #1: "ALL MEDICAL TECHNOLOGISTS AND TECHNICIANS IN THE EMPLOY OF THE RESPONDENT, SAVE AND EXCEPT PERSONS BOUND BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 576, AND BETWEEN THE RESPONDENT AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS AND ITS LOCAL UNION NO. 796 PERSONS COVERED BY A CERTIFICATE OF THE BOARD DATED MAY 23RD, 1968 HELD BY THE NURSES' ASSOCIATION

OTTAWA CIVIC HOSPITAL, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (97 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

FOR PURPOSES OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT TECHNOLOGISTS AND TECHNICIANS WHEN EMPLOYED IN THE GASTROENTEROLOGY LABORATORY AND IN THE DEPARTMENT OF METABOLISM AND NEPHROLOGY ARE INCLUDED IN THE BARGAINING UNIT.

FOR PURPOSES OF CLARITY, THE BOARD FURTHER NOTED THE AGREEMENT OF THE PARTIES THAT THE DENTAL TECHNICIAN, THE AUDIOMETER TECHNICIAN AND THE ORTHOPTIC TECHNICIAN EMPLOYED IN THE OUT-PATIENT DEPARTMENT ARE INCLUDED IN THE BARGAINING UNIT.

FOR PURPOSES OF CLARITY, THE BOARD FURTHER NOTED THE AGREEMENT OF THE PARTIES THAT MEDICAL TECHNOLOGISTS AND TECHNICIANS ENGAGED IN EXPERIMENTAL SURGERY IN THE DEPARTMENT OF RESEARCH, MEDICAL TECHNOLOGISTS IN THE BIO-MEDICAL ENGINEERING DEPARTMENT WHO EXERCISE SKILLS ALLIED TO ELECTRICAL AND MECHANICAL ENGINEERING FUNCTIONS WITH RESPECT TO MEDICAL EQUIPMENT AND TECHNICIANS EMPLOYED IN THE ELECTROENCEPHALOGRAPHY DEPARTMENT, ARE NOT INCLUDED IN THE BARGAINING UNIT.

FOR PURPOSES OF CLARITY, THE BOARD FURTHER NOTED THE AGREEMENT OF THE PARTIES THAT PERSONS EMPLOYED IN THE RADIOISOTOPE LABORATORY, LABORATORY, AND PERSONS EMPLOYED IN THE DEPARTMENTS OF RADIOLGY, PHYSIOTHERAPY, OCCUPATIONAL THERAPY, MEDICAL SOCIAL SERVICES, AND FOOD SERVICES, ARE NOT INCLUDED IN THE BARGAINING UNIT.

FOR PURPOSES OF CLARITY, THE BOARD FURTHER NOTED THE AGREEMENT OF THE PARTIES THAT NURSES, NURSE TECHNICIANS, LABORATORY SCIENTISTS, BIO-CHEMISTS, PATHOLOGISTS AND PERSONS ABOVE THE RANK OF PATHOLOGIST ARE NOT INCLUDED IN THE BARGAINING UNIT.

UNIT #2: "ALL MEDICAL TECHNOLOGISTS AND TECHNICIANS IN THE EMPLOY OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (18 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE COMPOSITION OF THE ABOVE BARGAINING UNIT AGREED TO BY THE PARTIES).

15516-68-R: OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 263 (APPLICANT) v. LORD & BURNHAM CO., LIMITED (RESPONDENT).

UNIT: "ALL OUTSIDE SALESMEN OF THE RESPONDENT AT ST. CATHARINES, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, DRAFTSMEN, OUTSIDE CONSTRUCTION EMPLOYEES AND EMPLOYEES REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (4 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 49).

15522-68-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) v. HARRISONS & CROSFIELD (CANADA) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF." (10 EMPLOYEES IN THE UNIT).

15666-68-R: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA AFL-CIO+CLC (APPLICANT) v. DUNLOP CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS BICYCLE TIRE AND TUBE DIVISION IN THE TOWNSHIP OF STEPHEN, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN, FORELADY, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (70 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15673-68-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) v. ALEXANDRA PARK I.G.A. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (9 EMPLOYEES IN THE UNIT).

15730-68-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. BINGHAM OPTICAL COMPANY LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS LABORATORY IN CHATHAM SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND CLERICAL STAFF." (9 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15731-68-R: AMALGAMATED CLOTHING WORKERS OF AMERICA (APPLICANT) v. PEARL LAUNDRY CO. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WATERLOO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD."

(36 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 62).

15739-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW (APPLICANT) v. SPIERS BROTHERS, LIMITED (RESPONDENT) v. SHEET METAL WORKERS¹ INTERNATIONAL ASSOCIATION, LOCAL UNION 539 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS PLASTICS DIVISION AT SARNIA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (28 EMPLOYEES IN THE UNIT).

15755-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL-CIO: CLC (APPLICANT) v. WALKER'S DIVISION OF GORDON MACKAY AND COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT SAULT STE. MARIE, SAVE AND EXCEPT SECTION HEADS, PERSONS ABOVE THE RANK OF SECTION HEAD, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (46 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15758-68-R: LONDON COMMERCIAL AND PAPER BOX WORKERS¹ UNION NO. 510 (APPLICANT) v. SILBY YOUNG PRINTING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (10 EMPLOYEES IN THE UNIT).

15764-68-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) v. ATLAS REELS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CALLENDER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (15 EMPLOYEES IN THE UNIT).

15814-68-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) v. WORKER'S CO-OP (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT FORT WILLIAM, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS COVERED BY A CERTIFICATE OF THE ONTARIO LABOUR RELATIONS BOARD DATED MARCH 10TH, 1969." (6 EMPLOYEES IN THE UNIT).

15827-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. CORPORATION OF THE TOWN OF COLLINGWOOD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE WORKS DEPARTMENT OF THE RESPONDENT SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (18 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15835-68-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) v. WIARTON DISTRICT CO-OPERATIVE INC. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WIARTON SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15836-68-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) v. CONCORDIA CLUB LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER SAVE AND EXCEPT PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (3 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15848-68-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION 880 (APPLICANT) v. RIVER MILL STEEL LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (6 EMPLOYEES IN THE UNIT).

15849-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. ERNO MANUFACTURING CO. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (16 EMPLOYEES IN THE UNIT).

15850-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. PATTERSON PLATING LTD. (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (27 EMPLOYEES IN THE UNIT).

15859-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. ROCCA STEEL LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE TOWN OF MISSISSAUGA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (31 EMPLOYEES IN THE UNIT).

15869-68-R: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15871-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. STAN MASSIE ESSO SERVICE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15872-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. BERT JOHNSON OIL BURNER SERVICE LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (4 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15873-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) v. MEREDITH-CONNELLY MOTORS CO. LIMITED (RESPONDENT) v. INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS (INTERVENER).

UNIT: "ALL NEW AND USED VEHICLE SALESMEN EMPLOYED BY THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT FOREMEN AND ASSISTANT SALES MANAGERS, PERSONS ABOVE THE RANKS OF FOREMAN AND ASSISTANT SALES MANAGER, AND OFFICE STAFF." (22 EMPLOYEES IN THE UNIT).

15878-68-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. IMPERIAL LEAF TOBACCO COMPANY OF CANADA, LIMITED (RESPONDENT).

UNIT: "ALL SEASONAL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS PLANT ON JOHN STREET NORTH AT AYLMER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE, CLERICAL AND SALES STAFF, NURSES, SECURITY GUARDS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERNATIONAL CHEMICAL WORKERS UNION, LOCAL 618 DATED FEBRUARY 10TH, 1969." (258 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15879-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. J. A. CRYDERMAN OIL BURNER SERVICE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (3 EMPLOYEES IN THE UNIT).

15880-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. CHURCH OIL BURNERS SALES & SERVICE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (3 EMPLOYEES IN THE UNIT).

15884-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. PICTON UTILITIES COMMISSION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PICTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (11 EMPLOYEES IN THE UNIT).

15886-68-R: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (APPLICANT) V. ZELLER'S LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS ZELLER'S AUTO & HOME CENTRE, GUELPH, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (11 EMPLOYEES IN THE UNIT).

15889-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. PRECISION VALVE (CANADA) LTD. (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT AJAX, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (90 EMPLOYEES IN THE UNIT).

15892-68-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE CORPORATION OF THE TOWNSHIP OF SALTFLEET (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SALTFLEET, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (24 EMPLOYEES IN THE UNIT).

15893-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) v. BEMAC PROTECTIVE COATINGS LTD. (RESPONDENT) v. LOCAL 172 OF THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (INTERVENER).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

15894-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) v. CESARONI (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

15896-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. NORTH-WESTERN STRUCTURAL STEEL LIMITED (RESPONDENT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER #1) v. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 759 (INTERVENER #2).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PORT ARTHUR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 759." (40 EMPLOYEES IN THE UNIT).

15898-68-R: LOCAL UNION 2679 UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. BEAVER LUMBER COMPANY LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES EMPLOYED AT AND WORKING OUT OF THE RESPONDENT'S MANUFACTURED HOMES DIVISION AT MILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (15 EMPLOYEES IN THE UNIT).

15899-68-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, I.B. OF T. (APPLICANT) v. NEWMARKET READY MIX COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NEWMARKET, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DISPATCHER, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (7 EMPLOYEES IN THE UNIT).

15905-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. POOLE CONSTRUCTION LIMITED (RESPONDENT) v. INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS AND HELPERS (INTERVENER).

UNIT: "ALL CARPENTERS, CARPENTERS' APPRENTICES AND CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

15910-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. W. D. EVANS BUILDING SERVICES (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE INSTALLATION OF DOORS AND WINDOWS IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (3 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO SECTION 6(1) OF THE LABOUR RELATIONS ACT).

15911-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. FLEETWAY ALUMINUM MANUFACTURING COMPANY LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (13 EMPLOYEES IN THE UNIT).

15919-68-R: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) v. COMBINED BUSINESS SYSTEMS GROUP LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (25 EMPLOYEES IN THE UNIT).

15923-68-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) v. BEAVER LUMBER COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF VAUGHAN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (17 EMPLOYEES IN THE UNIT).

15924-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO: CLC (APPLICANT) v. PROVINCIAL FRUIT COMPANY (OTTAWA) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (16 EMPLOYEES IN THE UNIT).

15925-68-R: GENERAL TRUCK DRIVERS' UNION LOCAL 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. H & S. HEAT TREATING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WELLAND, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (9 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES).

15940-68-R: OPERATIVE PLASTERERS' AND CEMENT MASON'S INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 124 (APPLICANT) v. ART CEMENT FLOORING LTD. (RESPONDENT).

UNIT: "ALL CEMENT MASON'S AND CEMENT MASON'S APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

15942-68-R: TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO (APPLICANT) v. VAN RAALE OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON SAVE AND EXCEPT DEPARTMENT HEADS, SUPERVISORS, FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF DEPARTMENT HEAD, SUPERVISOR, FOREMAN AND FORELADY, OFFICE AND CLERICAL STAFF, EMPLOYEES OF THE ENGINEERING DEPARTMENT, HOME WORKERS, SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (87 EMPLOYEES IN THE UNIT).

15944-68-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, A.F.L. - C.I.O. - C.L.C. LOCAL 197 (APPLICANT) v. MUNDY'S HOTEL-MOTEL-LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT IN ITS COCKTAIL LOUNGE AND BEVERAGE ROOMS AT HAMILTON SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND PERSONS REGULARLY EMPLOYED FOR NOT LESS THAN 24 HOURS PER WEEK." (7 EMPLOYEES IN THE UNIT).

THE APPLICATION WITH RESPECT TO THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DESCRIBED ABOVE IS DISMISSED.

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT IN ITS COCKTAIL LOUNGE AND BEVERAGE ROOMS AT HAMILTON EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR," (16 EMPLOYEES IN THE UNIT).

(APPLICANT CERTIFIED).

15958-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. MATTHEWS GROUP LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

15964-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. S. McNALLY & SONS, LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

15969-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
LOCAL UNION 93 (APPLICANT) v. CAMBRIAN CONSTRUCTION LIMITED
(RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF
THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT,
SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF
NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

15977-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
(APPLICANT) v. LEASIDE TOWERS APARTMENTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE
COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS
OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF
PICKERING IN THE COUNTY OF ONTARIO, ENGAGED IN THE OPERATION OF
CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY
ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT
NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."
(3 EMPLOYEES IN THE UNIT).

15978-69-R: TRENTON CONSTRUCTION WORKERS ASSOCIATION, LOCAL No. 52,
AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT)
v. MCINROY-MAINES CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS AND TRUCK DRIVERS IN THE EMPLOY OF
THE RESPONDENT AND EMPLOYEES OF THE RESPONDENT ENGAGED IN THE OPERA-
TION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE
PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND
EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING
FOREMAN, IN PRINCE EDWARD COUNTY AND THE TOWNSHIPS OF LAKE, TUDOR,
GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNTERFORD,
SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND THE TOW-
NSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF
NORTHUMBERLAND." (6 EMPLOYEES IN THE UNIT).

ALTHOUGH THE APPLICANT HAS APPLIED FOR AN ALL EMPLOYEE UNIT,
IT APPEARS FROM THE MATERIAL FILED WITH THE BOARD THAT THE RESPONDENT
EMPLOYED ONLY LABOURERS, TRUCK DRIVERS AND OPERATORS ON THE DATE OF
THE MAKING OF THE APPLICATION. HAVING REGARD TO THE PRINCIPLE ENUNCI-
ATED IN THE A. K. PENNER AND SONS CASE, O.L.R.B. MONTHLY REPORT,
OCTOBER 1966, p. 493, THE BOARD FOUND THE ABOVE UNIT TO BE APPROPRIATE.

15982-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. HEATH &
SHERWOOD UNDERGROUND DRILLING DIVISION OF GLENGARRY FOREST PRODUCTS
LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS COLEMAN MINE AND SOUTH MINE IN THE DISTRICT OF SUDBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (6 EMPLOYEES IN THE UNIT).

(WITH REGARD TO THE AGREEMENT OF THE PARTIES).

15985-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) v. POLARIS STEEL LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

15986-69-R: TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO (APPLICANT) v. CLOUDFOAM LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWN OF AJAX, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORE-LADY, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR (24) HOURS PER WEEK." (9 EMPLOYEES IN THE UNIT).

15991-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. GEORGE WIMPEY CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

15993-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1988 (APPLICANT) v. C. A. JOHANNSEN & SONS LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LANARK, THE TOWNSHIPS OF NORTH CROSBY, SOUTH CROSBY, SOUTH BURGESS, BASTARD, SOUTH ELMESLEY AND KITLEY IN THE COUNTY OF LEEDS AND THE TOWNSHIPS OF WOLFORD, OXFORD AND SOUTH GOWER IN THE COUNTY OF GRENVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

15995-69-R: BRICKLAYERS, MASONS AND PLASTERERS' INTERNATIONAL UNION OF AMERICA (APPLICANT) v. JOHN VERMULST CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WATERLOO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

16009-69-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION 141 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. MATTHEWS GROUP LIMITED (RESPONDENT).

UNIT: "ALL DUMP TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LAMBTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

16010-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. MATTHEWS GROUP LIMITED (RESPONDENT) V. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION 141 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF LAMBTON ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

16031-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. INDUSTRIAL CARPET INSTALLATION (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

16032-69-R: BRICKLAYERS, MASONS AND PLASTERERS' INTERNATIONAL UNION OF AMERICA, LOCAL 10 (APPLICANT) V. BENNETT & WRIGHT (BYCON DIVISION) (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

16038-69-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. JOHN HARVIE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF PETERBOROUGH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (2 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

15116-68-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) v. GIBSON WILLOUGHBY LIMITED, AGENTS FOR OWNERS (RESPONDENT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT IN ITS BOILER ROOM AT 88 - 100 UNIVERSITY AVENUE IN METROPOLITAN TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED
VOTERS' LIST

NUMBER OF PERSONS WHO CAST BALLOTS 5

BALLOTS SEGREGATED AND NOT COUNTED 6

NUMBER OF BALLOTS MARKED IN FAVOUR OF
APPLICANT 1

NUMBER OF BALLOTS MARKED IN FAVOUR OF
INTERVENER 5

15681-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) v. PUROLATOR PRODUCTS (CANADA) LIMITED (RESPONDENT) v. INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MISSISSAUGA SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CAFETERIA OPERATOR AND LABORATORY STAFF." (116 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED
VOTERS' LIST

110

NUMBER OF PERSONS WHO CAST BALLOTS 110

NUMBER OF BALLOTS MARKED IN FAVOUR OF
APPLICANT 77

NUMBER OF BALLOTS MARKED IN FAVOUR OF
INTERVENER 33

15738-68-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA LOCAL 264 (APPLICANT) v. WILLARDS CHOCOLATES LIMITED (RESPONDENT) v. WILLARDS CHOCOLATES LIMITED PLANT COUNCIL (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, MEDICAL STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS." (317 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	310
NUMBER OF PERSONS WHO CAST BALLOTS	310
NUMBER OF SPOILED BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	201
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	107

15830-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) v. THE PRESTOLITE COMPANY, DIVISION OF ELTRA OF CANADA LIMITED (RESPONDENT) v. THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN VAUGHAN TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, LABORATORY TECHNICIANS AND PERSONS COVERED BY A CERTIFICATE ISSUED BY THE ONTARIO LABOUR RELATIONS BOARD TO THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101, DATED MARCH 10TH, 1966." (54 EMPLOYEES IN THE UNIT).

NUMBER OF PERSONS ON REVISED VOTERS' LIST	48
NUMBER OF PERSONS WHO CAST BALLOTS	48
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	33
NUMBER OF BALLOTS MARKED IN FAVOUR OF P O L BATTERIES EMPLOYEES' ASSOCIATION	15

15904-68-R: UNITED TEXTILE WORKERS OF AMERICA (APPLICANT) v. CALDWELL LINEN MILLS LIMITED (RESPONDENT) v. INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN THE TOWNSHIP OF MATILDA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (434 EMPLOYEES IN THE UNIT).

NUMBER OF PERSONS ON REVISED VOTERS' LIST	405
NUMBER OF PERSONS WHO CAST BALLOTS	380
NUMBER OF BALLOTS SPOILED	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	244
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	135

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

15775-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) v. BEMAC PROTECTIVE COATINGS LTD. (RESPONDENT) v. LOCAL 172 OF THE OPERATIVE PLASTERERS' AND CEMENT MASON'S INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (INTERVENER).

UNIT: "ALL EMPLOYEES IN THE EMPLOY OF THE RESPONDENT WORKING AT OR OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, OFFICE STAFF, WATCHMEN AND DRAFTING PERSONNEL." (16 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	16
NUMBER OF PERSONS WHO CAST BALLOTS	16
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	16
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	0

APPLICATIONS FOR CERTIFICATION DISMISSED DURING APRIL

NO VOTE CONDUCTED

15394-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. CORPORATION OF THE CITY OF LONDON DR. JOHN DEARNESS HOME FOR ELDER CITIZENS (RESPONDENT) v. LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U. (INTERVENER). (9 EMPLOYEES).

15496-68-R: INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION (APPLICANT) v. CAROUSEL INN OF LONDON LIMITED (RESPONDENT). (38 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 46).

15579-68-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) v. SPURRELL'S I.G.A. (RESPONDENT) v. LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (INTERVENOR) v. GROUP OF EMPLOYEES (OBJECTORS). (27 EMPLOYEES).

15649-68-R: UNITED ASSOCIATION OF JOURNEYMAN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 819 (APPLICANT) v. LAFRAMBOISE PLUMBING & HEATING LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL PLUMBERS AND PLUMBERS' APPRENTICES, STEAM FITTERS AND STEAMFITTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (28 EMPLOYEES IN THE UNIT).

15668-68-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, I.B. OF T. (APPLICANT) v. DELL COAL LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SUDBURY SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (64 EMPLOYEES IN THE UNIT).

15714-68-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION 141 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. REIMER EXPRESS LINES LIMITED (RESPONDENT). (7 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 58).

15818-68-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, CLC (APPLICANT) v. FIORENTINO PRODUCERS LTD. (RESPONDENT). (55 EMPLOYEES).

15855-68-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) v. SWIFT CANADIAN COMPANY LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS). (15 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 71).

15856-68-R: THE CANADIAN UNION OF CONSTRUCTION WORKERS (APPLICANT) v. ZACHARY DE VUONO LIMITED (RESPONDENT) v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 506 (INTERVENOR). (12 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 71).

15862-68-R: THE CANADIAN UNION OF CONSTRUCTION WORKERS (APPLICANT) v. RIA CONSTRUCTION LIMITED (RESPONDENT) v. BRICKLAYERS, MASONS & TILESETTERS UNION, LOCAL 2 ONTARIO (INTERVENER). (12 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 76).

15870-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. E. PARKER OIL HEATING (RESPONDENT). (1 EMPLOYEE).

15897-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. PATRICK HARRISON & COMPANY LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS). (59 EMPLOYEES).

15937-68-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL UNION, NO. 647 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. WILLIAM NEILSON LIMITED (RESPONDENT) v. AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, CLC (INTERVENER #1) v. THE EMPLOYEES COUNCIL, WILLIAM NEILSON LIMITED (INTERVENER #2) v. GROUP OF EMPLOYEES (OBJECTORS). (75 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 79).

15961-69-R: LOCAL 666, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (APPLICANT) v. COWAN & DICKHOUT LTD. (RESPONDENT). (3 EMPLOYEES).

15962-69-R: LOCAL UNION 303, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) v. COWAN AND DICKHOUT LTD. (RESPONDENT). (3 EMPLOYEES).

15975-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. CENTENNIAL LONDON CABINETS LTD. (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS). (9 EMPLOYEES).

15976-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. GOLDLIST CONSTRUCTION LIMITED (RESPONDENT). (NO EMPLOYEES).

16025-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1988 (APPLICANT) v. DALACOUSTIC CONTRACTORS LIMITED (RESPONDENT). (2 EMPLOYEES).

16030-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1988 (APPLICANT) v. NORTHERN FLOORING CO. (QUEBEC) LTD. (RESPONDENT). (2 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 80).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

14690-68-R: THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) v. THE WELLESLEY HOSPITAL (RESPONDENT) v. BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 204 (INTERVENER #1) v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (INTERVENER #2). (15 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED

VOTERS' LIST

13

NUMBER OF PERSONS WHO CAST BALLOTS

13

BALLOT BOX SEALED.

(SEE INDEXED ENDORSEMENT PAGE 31).

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

15521-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. ELLIOTT RUBBER & PLASTIC LTD. (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ELLIOT LAKE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (24 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST

14

NUMBER OF PERSONS WHO CAST BALLOTS

14

NUMBER OF BALLOTS SPOILED

1

NUMBER OF BALLOTS MARKED IN FAVOUR

4

OF APPLICANT

NUMBER OF BALLOTS MARKED AGAINST

9

APPLICANT

15578-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) v. ZELLER'S LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES IN PETERBOROUGH, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (34 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST

34

NUMBER OF PERSONS WHO CAST BALLOTS

34

NUMBER OF BALLOTS SPOILED

1

BALLOTS SEGREGATED AND NOT COUNTED

1

NUMBER OF BALLOTS MARKED IN FAVOUR

14

OF APPLICANT

NUMBER OF BALLOTS MARKED AGAINST

18

APPLICANT

15646-68-R: AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, CLC (APPLICANT) v. BEEF TERMINAL LIMITED (RESPONDENT) v. BEEF TERMINAL EMPLOYEES ASSOCIATION (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS COVERED BY A COLLECTIVE AGREEMENT WITH THE CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 101, TORONTO." (75 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	69
NUMBER OF PERSONS WHO CAST BALLOTS	69
BALLOTS SEGREGATED AND NOT COUNTED	2
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	24
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	42

15659-68-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION A.F.L. - C.I.O. - C.L.C. LOCAL 197 (APPLICANT) v. PETER MELNYK LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL BARTENDERS AND BEVERAGE ROOM WAITERS IN THE EMPLOY OF THE RESPONDENT AT THE GLADSTONE HOUSE IN HAMILTON, SAVE AND EXCEPT OWNERS AND MANAGERS, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	4
NUMBER OF PERSONS WHO CAST BALLOTS	6
NUMBER OF BALLOTS SEGREGATED AND NOT COUNTED	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	4

15708-68-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) v. ST. CATHARINES SCREW MACHINE PRODUCTS (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ST. CATHARINES SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (14 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	13
NUMBER OF PERSONS WHO CAST BALLOTS	13
NUMBER OF BALLOTS SPOILED	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	6
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	6

15712-68-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) v. ETHEL CORPORATION OF CANADA LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE COMPANY AT CORUNNA, SAVE AND EXCEPT SHIFT TECHNICIANS, PERSONS ABOVE THE RANK OF SHIFT TECHNICIAN, CHIEF STOREKEEPER AND OFFICE STAFF." (58 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	57
NUMBER OF PERSONS WHO CAST BALLOTS	56
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	11
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	45

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING APRIL

15834-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. F. E. JOHNSTON DRILLING COMPANY LIMITED (RESPONDENT). (12 EMPLOYEES).

15861-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (ROCK AND TUNNEL WORKERS' DIVISION) (APPLICANT) v. AGNEW LAKE MINES LIMITED (RESPONDENT) v. UNITED STEELWORKERS OF AMERICA (INTERVENOR). (20 EMPLOYEES).

15912-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. COMMANDER ALUMINUM LIMITED (RESPONDENT). (1 EMPLOYEE).

15918-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. DAVEY TREE EXPERT COMPANY OF CANADA LIMITED (RESPONDENT). (14 EMPLOYEES).

15979-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1988 (APPLICANT) v. THE AUSTIN COMPANY LIMITED, ENGINEERS AND BUILDERS (RESPONDENT). (12 EMPLOYEES).

15987-69-R: TORONTO TYPOGRAPHICAL UNION #91 (APPLICANT) v. CCH CANADIAN LIMITED (RESPONDENT). (32 EMPLOYEES).

15998-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 249 KINGSTON ONT. (APPLICANT) v. LOUIS DONOLO INC. (RESPONDENT). (2 EMPLOYEES).

16015-69-R: BRICKLAYERS, MASONS AND PLASTERERS' INTERNATIONAL UNION OF AMERICA, LOCAL 10 (APPLICANT) v. ST. LAWRENCE MARBLE & TERRAZZO CO. LIMITED (RESPONDENT). (12 EMPLOYEES).

16042-69-R: BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA (INTERNATIONAL UNION) (APPLICANT) v. ONTARIO HOUSING CORPORATION (RESPONDENT). (29 EMPLOYEES).

16050-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 597 (APPLICANT) v. O. J. GAFFNEY LIMITED (RESPONDENT). (18 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF

DURING APRIL

14937-68-R: JAMES MOIR (APPLICANT) v. BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 415 (RESPONDENT) v. GORMAN ECKERT AND COMPANY LIMITED (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 81).

15688-68-R: AOCO LIMITED (GROUP OF EMPLOYEES) (APPLICANT) v. INTERNATIONAL UNION OF DOLL AND TOY WORKERS OF THE UNITED STATES AND CANADA (RESPONDENT) v. AOCO LIMITED (INTERVENER). (27 EMPLOYEES). (DISMISSED).

15838-68-R: GORDON McCLENNAN (APPLICANT) v. THE INTERNATIONAL UNION OF OPERATING ENGINEERS (LOCAL 796) (RESPONDENT) v. BRUNSWICK OF CANADA LIMITED (INTERVENER). (4 EMPLOYEES). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 93).

15930-68-R: LOUNGE AND BEVERAGE ROOM STAFF OF THE AMBASSADOR MOTOR HOTEL SUDBURY (APPLICANT) v. RETAIL WHOLESALE AND DEPARTMENT STORE UNION LOCAL 579 AFL-CIO-CLC (RESPONDENT). (6 EMPLOYEES). (DISMISSED).

15957-69-R: ALLAN E. LEEDER, WILLIAM H. LANGMAN BERNARD A. LAW AND STANLEY M. BERRY (APPLICANTS) v. THE CANADIAN UNION OF OPERATING ENGINEERS (RESPONDENT) v. HART CHEMICAL LIMITED (INTERVENER). (4 EMPLOYEES). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 95).

16002-69-R: INTERCHEM PRESSTITE LIMITED (APPLICANT) v. BROTHERHOOD OF SEALANT WORKERS OF ONTARIO (RESPONDENT). (18 EMPLOYEES). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 98).

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

APRIL

15796-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1081 (APPLICANT) v. BLACKER & RONALD (MASONRY CONTRACTORS) (RESPONDENT). (GRANTED).

15797-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1081 (APPLICANT) v. INSPIRATION LIMITED (RESPONDENT). GRANTED).

15798-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1081 (APPLICANT) v. MARLYNN CONSTRUCTION LTD. (RESPONDENT). (GRANTED).

15799-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1081 (APPLICANT) v. CROMAR CONSTRUCTION LTD. (RESPONDENT). (GRANTED).

15800-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1081 (APPLICANT) v. R. S. W. MASONRY (RESPONDENT). (GRANTED).

15801-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1081 (APPLICANT) v. ALZNER MASONRY (RESPONDENT). (GRANTED).

15802-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1081 (APPLICANT) v. ABBEY CARPENTRY (RESPONDENT). (GRANTED).

15803-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1081 (APPLICANT) v. REINHARDT MASONRY LIMITED (RESPONDENT). (GRANTED).

15804-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1081 (APPLICANT) v. LAVERN ASMUSSEN LIMITED (RESPONDENT). (GRANTED).

15805-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1081 (APPLICANT) v. HUNTER & MAXWELL LTD. (RESPONDENT). (GRANTED).

15806-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1081 (APPLICANT) v. ACE WELDING & BOILER CO LTD. (RESPONDENT). (GRANTED).

15807-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1081 (APPLICANT) v. RENWICK CONSTRUCTION LIMITED (RESPONDENT). (GRANTED).

15808-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1081 (APPLICANT) v. WM. FORD CONSTRUCTION LTD. (RESPONDENT). (GRANTED).

15809-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1081 (APPLICANT) v. ABE DICK MASONRY LIMITED (RESPONDENT). (GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

APRIL

15913-68-U: DRAVO OF CANADA LIMITED (APPLICANT) v. CERTAIN EMPLOYEES OF THE APPLICANT NAMED ON THE ATTACHED LIST (RESPONDENTS). (WITHDRAWN).

15996-69-U: PIGOTT CONSTRUCTION CO. LTD. (APPLICANT) v. PATRICK CAMPBELL ET AL (RESPONDENTS). (DISMISSED).

16035-69-U: CLARKSON CONSTRUCTION COMPANY LIMITED (APPLICANT) v. LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION 183 (RESPONDENT). (WITHDRAWN).

APPLICATION FOR DECLARATION THAT LOCK-OUT UNLAWFUL DISPOSED OF DURING

APRIL

15545-68-U: GENERAL TRUCK DRIVERS' UNION, LOCAL 938, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. SQUARE DEAL CARTAGE LIMITED (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING APRIL

15382-68-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW (APPLICANT) v. NORTH AMERICAN PLASTICS CO. LIMITED, MICHAEL LADNEY, WILLIAM LATHAM, PETER EMANUEL AND FRANK CORCORAN (RESPONDENTS). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 100).

15487-68-U: BRAMPTON TRUCK DRIVERS ASSOCIATION, LOCAL NO. 54, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. BRAMPTON TRANSPORT LIMITED (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 105).

15488-68-U: BRAMPTON TRUCK DRIVERS ASSOCIATION, LOCAL NO. 54, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. BRAMPTON TRANSPORT LIMITED (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 107).

15651-68-U: THE INTERNATIONAL LADIES GARMENT WORKERS UNION (APPLICANT) v. FORMFIT INTERNATIONAL, S.A. (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 108).

<u>15829-68-U:</u> FRASER-BRACE ENGINEERING COMPANY LIMITED (APPLICANT) v.		
TONY LAGACE	ADELARD BOIVIN	JOSEPH LEBEL
OVIDE BOUCHER	ROBERT V. MARTEL	RAYMOND LEBLANC
GERARD BENARD	EMARD CYR	ROLAND COTE
ARNOLD TAYLOR	LIONEL ROY	GEORGE GALIPEAU
KALLE KANERVA	MERVYN McDONALD	LORENZO BLAIS
JOSEPH RESTOULE	NELSON SCHRYER	DOUGLAS PATRY
CAMILLE J. OUELLET	THOMAS A. KELLY	WILFRED ROBERGE
ALLEN PROULX	HECTOR THERRIEN	LAWRENCE CHUSROSKIE
GLEN J. SKELLITER	MORRIS MENZIES	RENE LAGACE
RONLAD JOHNSON	DONALD LLOYD	NORMAND GAREAU
KALLE LAINÉ	MAURICE DOUCETTE	ARMAND AUBREY
MARCEL LEMYRE	JEAN PAUL MARCOTTE	ROBERT MAJOR
ANDRE LEMYRE (RESPONDENTS). (GRANTED).		

(SEE INDEXED ENDORSEMENT PAGE 116).

15915-68-U: DRAVO OF CANADA LIMITED (APPLICANT) v. CERTAIN EMPLOYEES OF THE APPLICANT NAMED ON THE ATTACHED LIST (RESPONDENTS). (WITHDRAWN).

15946-68-U: HOAR TRANSPORT COMPANY LIMITED (APPLICANT) v. S. MATKIN (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 117).

15947-68-U: HOAR TRANSPORT COMPANY LIMITED (APPLICANT) v. RHEAL CORRIEVEAU (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 119).

15948-68-U: HOAR TRANSPORT COMPANY LIMITED (APPLICANT) v. NELSON DUMAS (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 120).

15949-68-U: STAR TRANSFER LIMITED (APPLICANT) v. NELSON DUMAS (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 120).

15950-68-U: STAR TRANSFER LIMITED (APPLICANT) v. JACQUES PICHERETTE (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 121).

15951-68-U: STAR TRANSFER LIMITED (APPLICANT) v. HERBERT BROWN (RESPONDENT). (DISMISSED).

15952-68-U: STAR TRANSFER LIMITED (APPLICANT) v. ROBERT SANTERRE (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 122).

16087-69-U: WINDSOR CONSTRUCTION ASSOCIATION (APPLICANT) v. LOCAL UNION 773 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS ESSEX COUNTY, UNIT #1 AND OTHERS (SEE SCHEDULE "A" HERETO) (RESPONDENTS). (WITHDRAWN).

16088-69-U: WINDSOR CONSTRUCTION ASSOCIATION (APPLICANT) v. LOCAL UNION 733 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS ESSEX COUNTY, UNIT #1 AND OTHERS (SEE SCHEDULE "A" HERETO) (RESPONDENTS). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF
DURING APRIL

15727-68-U: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS (COMPLAINANT) v. BAUSCH AND LOMB OPTICAL COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

15750-68-U: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, A.F.L.-C.I.O.-C.L.C., LOCAL 197 (COMPLAINANT) v. PETER MELNYK LIMITED (RESPONDENT). (WITHDRAWN).

15777-68-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (COMPLAINANT) v. J. C. ADAMS CO. LTD. (RESPONDENT). (WITHDRAWN).

15778-68-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (COMPLAINANT) v. J. C. ADAMS CO. LTD. (RESPONDENT). (WITHDRAWN).

15810-68-U: AUTOMOBILE SALESMEN'S ASSOCIATION (COMPLAINANT) v. WEBSTER MOTORS (WINDSOR) LIMITED (RESPONDENT). (WITHDRAWN).

15831-68-U: WAREHOUSEMEN AND MISCELLANEOUS, DRIVERS LOCAL UNION 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) v. MOORE GLASS LTD. (RESPONDENT). (WITHDRAWN).

15865-68-U: THE HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION - LOCAL 261 (COMPLAINANT) v. THE TALISMAN MOTOR INN (RESPONDENT). (WITHDRAWN).

15866-68-U: HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION - LOCAL 261 (COMPLAINANT) v. THE TALISMAN MOTOR INN (RESPONDENT). (WITHDRAWN).

15907-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. PATTERSON PLATING LTD. (RESPONDENT). (WITHDRAWN).

15908-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. ERNO MANUFACTURING CO. LIMITED (RESPONDENT). (WITHDRAWN).

15916-68-U: AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA (COMPLAINANT) v. BEEF TERMINAL LIMITED (RESPONDENT). (WITHDRAWN).

15920-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. BULOVA WATCH COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

15926-68-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) v. THE ELLIOT LAKE CENTRE FOR CONTINUING EDUCATION (RESPONDENT). (WITHDRAWN).

15955-69-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (COMPLAINANT) v. FLEETWAY ALUMINUM MANUFACTURING LTD. (RESPONDENT). (WITHDRAWN).

15956-69-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (COMPLAINANT) v. FLEETWAY ALUMINUM MFG. LTD. (RESPONDENT). (WITHDRAWN).

15981-69-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. ALLANSON MANUFACTURING CORPORATION LIMITED (RESPONDENT). (WITHDRAWN).

APPLICATION FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

15706-68-R: INTERNATIONAL UNION, UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, AFFILIATED WITH THE AFL-CIO AND THE CLC, AND ITS LOCALS 168 AND 719, - AND - STANDARD PRODUCTS (CANADA) LIMITED (JOINT APPLICANTS) v. CANADIAN RUBBER WORKERS UNION 154 (INTERVENER). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 123).

APPLICATION UNDER SECTION 47A DISPOSED OF DURING APRIL

15610-68-M: KENT COUNTY SEPARATE SCHOOL BOARD (APPLICANT) v. BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 210, AFL-CIO-CLC; COMBINED ROMAN CATHOLIC SEPARATE SCHOOLS, WALLACEBURG; THE BOARD OF TRUSTEES OF THE COMBINED ROMAN CATHOLIC SEPARATE SCHOOLS OF TILBURY (RESPONDENTS). (GRANTED).

UNIT: "ALL EMPLOYEES OF THE APPLICANT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK."

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	25
NUMBER OF PERSONS WHO CAST BALLOTS	25
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT, BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION LOCAL 210	12
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT, BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION LOCAL 210	13

REFERENCE TO BOARD PURSUANT TO SECTION 79A

15726-68-M: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION 749 (FORMERLY KNOWN AS THE INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA LOCAL 749) (TRADE UNION) v. DAUGULIS COMPANY LIMITED (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 128).

15874-68-M: THE BUILDING AND CONSTRUCTION TRADES COUNCIL OF OTTAWA - HULL AND DISTRICT (TRADE UNION) v. V. K. MASON CONSTRUCTION LTD. (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 131).

15906-68-M: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (TRADE UNION) v. ELGIN CONSTRUCTION CO. LIMITED (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 134).

15973-69-M: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION (TRADE UNION) v. THE CORPORATION OF THE TOWN OF CONISTON (EMPLOYER).

15974-69-M: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO: CLC (TRADE UNION) v. THE CORPORATION OF THE TOWN OF CONISTON (EMPLOYER).

15984-69-M: BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA; GLAZIERS & METAL MECHANICS, LOCAL UNION 1671 (TRADE UNION) v. CANADIAN PITTSBURGH INDUSTRIES LIMITED HENDERSON GLASS (LAKEHEAD) LIMITED PILKINGTON BROTHERS (CANADA) LIMITED (EMPLOYERS).

(SEE INDEXED ENDORSEMENT PAGE 135).

JURISDICTIONAL DISPUTES

14920(A)-68-JD: BEER PRECAST CONCRETE LIMITED (COMPLAINANT) v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 AND THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON-WORKERS, LOCAL UNION NUMBER 736 (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 137).

15945(A)-68-JD: AMALGAMATED METAL INDUSTRIES LIMITED (COMPLAINANT) v. INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS & HELPERS INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS LOCAL UNION NO. 786 (A.F.L.) (RESPONDENTS). (WITHDRAWN).

15945(B)-68-JD: AMALGAMATED METAL INDUSTRIES LIMITED (APPLICANT) v. THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL UNION NO. 786 (RESPONDENT). (WITHDRAWN).

16086(A)-69-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 506 AND LOCAL 527 (COMPLAINANTS) v. OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL 124 AND BEMAC PROTECTIVE COATING LIMITED (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 138).

16086(B)-69-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 AND LOCAL 527 (APPLICANTS) v. OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 124 (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 139).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

15689-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 721 (APPLICANT) v. ARCAN EASTERN LTD. (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 141).

15692-68-R: COUNCIL OF CONCRETE-FORMING TRADE UNIONS (APPLICANT) v. FORMALL LIMITED (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 143).

15765-68-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1687 (APPLICANT) v. K.V.C. ELECTRIC LIMITED (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 143).

INDEXED ENDORSEMENTS - CERTIFICATION

14690-68-R: THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) v. THE WELLESLEY HOSPITAL (RESPONDENT) v. BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 204 (INTERVENER #1) v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (INTERVENER #2).

BEFORE: H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
P.J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: IAN SCOTT, ROBERT SOULIERE FOR THE APPLICANT, A.H. MAXWELL, E.T. MUSTARD FOR THE RESPONDENT, A.E. GOLDEN FOR INTERVENER #2 AND NO ONE APPEARING FOR INTERVENER #1.

DECISION OF H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER
P.J. O'KEEFFE: APRIL 11, 1969.

1. THE INTERVENER, INTERNATIONAL UNION OF OPERATING ENGINEERS CHALLENGED THE STATUS OF THE APPLICANT IN THIS APPLICATION AND ALLEGED INTER ALIA THAT THE NAME OF THE APPLICANT WAS CHANGED TO THE CANADIAN UNION OF OPERATING ENGINEERS AND ALLIED TRADES AND THAT THERE WERE SUBSTANTIAL CHANGES MADE IN THE INTERNAL ORGANIZATION OF THE APPLICANT AS A RESULT OF WHICH THE APPLICANT IS DIFFERENT THAN AS REPRESENTED IN THIS APPLICATION. THE INTERVENER THEREFORE REQUESTS THE BOARD TO DISMISS THE APPLICATION AS IT HAS NOT BEEN CORRECTLY BROUGHT.

2. BRIEFLY THE EVIDENCE DISCLOSES THAT IN THE APPLICANT'S CONVENTION HELD IN JUNE 1967 A RESOLUTION WAS SUBMITTED BY LOCAL 102 IN THE FOLLOWING FORM:

" ARTICLE 1 - NAME

WHEREAS: SINCE ITS INCEPTION MANY OF THE MEMBERS OF THE CANADIAN UNION OF OPERATING ENGINEERS HAVE NOT BEEN ENGINEERS AS SUCH, AND WHEREAS: IT IS DESIRED TO ACKNOWLEDGE THE CONTRIBUTION OF THOSE IN ALLIED TRADES WHO HAVE DONE SO MUCH FOR THIS UNION, THEREFORE BE IT RESOLVED: THAT TO MORE PROPERLY IDENTIFY OURSELVES, WE CHANGE OUR NAME TO:

CANADIAN UNION OF OPERATING ENGINEERS & ALLIED TRADES (C.U.O.E. & A.T.)"

THE RESOLUTION COMMITTEE MOVED CONCURRENCE WITH THIS RESOLUTION PENDING LEGAL ADVICE WHICH MOTION WAS CARRIED. A SPECIAL CONVENTION OF THE UNION WAS HELD IN FEBRUARY 1968 AT WHICH IN ESSENCE THE LOCALS OF THE UNION WERE GIVEN COMPLETE LOCAL AUTONOMY WITH THE RESPONSIBILITY FOR SERVICE TO THEIR MEMBERS AND THE PER CAPITA TAX PAID TO THE APPLICANT WAS REDUCED FROM \$4.50 PER MEMBER PER MONTH TO \$1.25 REFLECTING THESE INTERNAL CHANGES. THE MINUTES

OF THAT CONVENTION FILED WITH THE BOARD WERE HEADED IN PART "MINUTES OF THE SPECIAL CONVENTION OF THE CANADIAN UNION OF OPERATING ENGINEERS..." THE CONVENTION DEALT ONLY WITH THE STRUCTURE CHANGES IN THE UNION, AND NO MATTERS RELATING TO THE PROPOSED CHANGE OF NAME APPEARED IN THE MINUTES. THE NOTICES OF THAT CONVENTION WERE SENT TO ALL LOCAL PRESIDENTS OF "CANADIAN UNION OF OPERATING ENGINEERS." PRIOR TO THIS LATTER CONVENTION THE APPLICANT RECEIVED FROM ITS SOLICITOR MR. J.W. WHITESIDE A "SECOND DRAFT OF THE CONSTITUTION OF THE CANADIAN UNION OF OPERATING ENGINEERS AND ALLIED TRADES" WHICH PROVIDED FOR CERTAIN AMENDMENTS TO THE CONSTITUTION ADOPTED IN 1960 AND TO REFLECT THE CHANGES WHICH WERE AUTHORIZED AT THE GENERAL CONVENTION HELD IN JUNE 1967. THIS DRAFT WAS FORWARDED TO "ALL GENERAL EXECUTIVE BOARD MEMBERS" BY THE GENERAL PRESIDENT ON JANUARY 24TH, 1968.

3. ON APRIL 2ND, B.A. ROBINET, THE GENERAL SECRETARY-TREASURER UNDER THE STYLE OF CANADIAN UNION OF OPERATING ENGINEERS, NOTIFIED ALL REPRESENTATIVES AS THE CHANGE TO LOCAL AUTONOMY WAS TO BECOME EFFECTIVE ON MAY 1ST, 1968 THAT THEY SHOULD TAKE CERTAIN STEPS RELATING TO THEIR POSITION. FOLLOWING THIS THERE WAS A COPY OF A LETTER DATED MAY 14TH, 1968 HEADED "CANADIAN UNION OF OPERATING ENGINEERS - LOCAL 101" ADDRESSED TO "ALL STEWARDS" SIGNED ON BEHALF OF ART CAGE, RECORDING SECRETARY, THE CONTENTS OF WHICH ARE AS FOLLOWS:

"ENCLOSED IS A COPY OF OUR CONSTITUTION AS AMENDED AT THE 1967 JUNE CONVENTION AND ALSO THE SPECIAL CONVENTION HELD IN FEBRUARY, 1968.
WE ARE NOT ABLE TO SUPPLY A COPY TO ALL OUR MEMBERS AS OUR SUPPLY IS LIMITED,

THE BOOKLET IS NOT AVAILABLE AS IN THE PAST, AND THIS IS DUE TO THE SHORTNESS OF TIME BEFORE OUR 1969 CONVENTION, AT WHICH TIME THE CONSTITUTION WILL BE COMPLETELY REALIGNED IN ACCORDANCE WITH THE RECOMMENDATIONS OF OUR LAWYER. THE COST OF PRINTING THE PRESENT CONSTITUTION IN BOOKLET FORM WOULD NOT BE JUSTIFIED UNDER THESE CONDITIONS.

WOULD YOU MAKE THIS COPY AVAILABLE TO THE OTHER MEMBERS OF YOUR BARGAINING UNIT."

ATTACHED TO THIS LETTER WAS A DOCUMENT DESCRIBED AS FOLLOWS:

"C O N S T I T U T I O N
OF

THE CANADIAN UNION OF OPERATING ENGINEERS AND ALLIED TRADES

ESTABLISHED 1960

1967 EDITION".

ON MAY 28TH, 1968 THE FOLLOWING LETTER WAS SENT TO "ALL MEMBERS OF THE CANADIAN UNION OF OPERATING ENGINEERS BY B. A. ROBINET;

"YOU WILL NOTE THAT THE NAME OF THE UNION IS STILL THE CANADIAN UNION OF OPERATING ENGINEERS, AS WE HAVE BEEN UNABLE TO THIS DATE, HAVE THE NAME CHANGED AS PASSED BY THE 1967 CONVENTION TO THAT OF THE CANADIAN UNION OF OPERATING ENGINEERS AND ALLIED TRADES APPROVED BY THE LABOUR RELATIONS BOARD."

TO COMPLETE THE SEQUENCE OF DOCUMENTATION IN THIS MATTER, MR. WHITESIDE TESTIFIED THAT IN RESPONSE FROM AN OFFICER OF THE APPLICANT REQUESTING AN EXPLANATION OF THE CIRCUMSTANCES SURROUNDING THE CHANGE OF NAME ON JULY 12TH, 1968 HE WROTE A LETTER TO MR. C. J. SCOTT, BUSINESS MANAGER OF THE CANADIAN UNION OF OPERATING ENGINEERS. MR. WHITESIDE STATED THAT HE RECOMMENDED NO STEPS BE TAKEN WITH RESPECT TO THE RESOLUTION CONCERNING THE CHANGE OF NAME UNTIL ALL THE STEPS HAD BEEN TAKEN WITH RESPECT TO THE WHOLE CONSTITUTION. HE THEN PREPARED A DRAFT OF A CONSTITUTION IN THE FALL OF 1967 AND LATER A SECOND DRAFT REFERRED TO ABOVE. HE SUBSEQUENTLY HAD A FURTHER MEETING WITH MR. DOESBURG, GENERAL PRESIDENT, AND MR. ROBINET AND PREPARED A THIRD DRAFT BUT WAS LATER TOLD THAT THIS WAS NOT REACHED AT A SUBSEQUENT UNION MEETING IN APRIL 1968. SINCE THAT TIME HE RECEIVED NO OTHER INSTRUCTIONS. HE CLAIMED THAT AT THE TIME OF HIS LETTER DATED JULY 12TH, 1968 THE NEW CONSTITUTION TO HIS KNOWLEDGE HAD NOT BEEN ENACTED, AND FURTHER SAID THAT THE EXECUTIVE BOARD WOULD NOT HAVE ACTED WITHOUT REFERENCE TO HIM. HE HAD NOT RECEIVED ANY SPECIFIC INSTRUCTIONS AS TO THE CHANGE OF NAME, NOR HAD HE RECOMMENDED ANY PROCEDURE BE TAKEN UNDER THE LABOUR RELATIONS ACT IN THIS REGARD.

4. ARTHUR CAGE, PRO-TEM RECORDING SECRETARY OF LOCAL 101, TESTIFIED THAT THE PROPOSED CHANGE OF NAME WAS PASSED SUBJECT TO LEGAL ADVICE BEING OBTAINED AND MR. WHITESIDE WAS GIVEN AUTHORITY TO GO OVER THE WHOLE CONSTITUTION AND REPORT TO THE APPLICANT AND ITS LOCALS. THEY HAD NOT RECEIVED ANY OFFICIAL

NOTIFICATION FROM THEIR SOLICITOR. THE APPLICANT HAS NEVER USED THE NAME AS PROPOSED AT THE CONVENTION AND THE APPLICATIONS FOR MEMBERSHIP IN THIS APPLICATION ARE TO THE CANADIAN UNION OF OPERATING ENGINEERS, THE CARDS FOR WHICH WERE PRINTED IN THE FALL OF 1967. HE MAINTAINED THAT THE CONSTITUTION IN EFFECT WAS THAT OF THE 1965 EDITION AND NO OTHER. HE STATED THAT HIS LETTER, REFERRED TO ABOVE, WAS NOT AUTHORIZED BY HIM AND WAS SENT OUT BY HIS SECRETARY TO THE STEWARDS TO ACQUAINT THEM WITH THE PROPOSED CHANGES. HE SAW THE LETTER IN MAY BUT DID NOT TRY TO CORRECT IT OR STOP IT. HE HAD RECEIVED 25 COPIES OF IT FROM THE NATIONAL OFFICE AND WERE SENT OUT ONLY TO THE PLANT STEWARDS AND TO NO OTHER MEMBERS WHO HAVE NOT BEEN GENERALLY TOLD OF THE CHANGE OF NAME. THE SPECIAL CONVENTION HELD IN FEBRUARY 1968 DEALT WITH ONLY THE CHANGE TO LOCAL AUTONOMY AND DID NOT DEAL WITH THE CHANGE OF NAME. HE SAID THAT THE FINAL DRAFT OF THE CONSTITUTION WOULD BE SENT TO THE LOCALS, AND THEIR DECISIONS WOULD BE FORWARDED TO THE NATIONAL OFFICE BUT NOTHING WOULD BE FINALIZED UNTIL THE NEXT CONVENTION TO BE HELD IN JUNE 1969.

5. ROBERT SOULIERE, WHO PRIOR TO MAY 1ST, 1968 WAS A GENERAL EXECUTIVE OFFICER OF THE APPLICANT AND AFTER THAT DATE A BUSINESS MANAGER OF LOCAL 101, STATED THAT HE WAS PRESENT AT THE CONVENTION HELD IN JUNE 1967 AND THE CHANGE OF NAME WAS TO TAKE PLACE ONLY AFTER SEEKING LEGAL ADVICE ON THE WHOLE CONSTITUTION, BUT THEIR SOLICITOR HAD NEVER ADVISED THEM THAT THE CHANGE OF NAME COULD TAKE PLACE AND MAINTAINED THAT HE WOULD KNOW OF THE RECEIPT OF ANY SUCH ADVICE. THE INTENTION WAS THAT AFTER THE FORM OF CONSTITUTION HAD BEEN AGREED UPON, THEN THERE WOULD BE A REFERENDUM VOTE OF THE WHOLE MEMBERSHIP AT A CONVENTION. THE EXECUTIVE BOARD HAD NEVER APPROVED THE CHANGE OF NAME BUT HAD ONLY PERUSED THREE DRAFT CONSTITUTIONS. THE THIRD DRAFT WAS ATTACHED TO CAGE'S LETTER OF MAY 11TH, 1968. HE SAID THAT HE SIGNED THE PRESENT APPLICATION AS AN OFFICER OF THE APPLICANT AS HE WAS NOT THEN EMPLOYED BY LOCAL 101. THAT CHANGE WAS EFFECTED ON SEPTEMBER 23RD, 1968, HOWEVER, HE SAID THE APPLICANT HERE WAS SEEKING BARGAINING RIGHTS FOR THE LOCAL WHICH HAD BEEN ITS PRACTICE IN THE PAST.

6. FOR THE INTERVENER TO BE SUCCESSFUL IN ITS CHALLENGE THE BOARD MUST FIND THAT THE APPLICANT NAMED HEREIN IS NOT IN FACT THE TRUE APPLICANT. IN SUBMITTING THAT THE BOARD CAN MAKE THIS FINDING THE INTERVENER RELIES ON THE PASSAGE OF A RESOLUTION AT THE CONVENTION OF THE APPLICANT HELD IN JUNE 1967 TO CHANGE ITS NAME, AND TO THE RESULTS FLOWING FROM THE SPECIAL CONVENTION HELD BY THE APPLICANT IN FEBRUARY 1968 IN GRANTING LOCAL AUTONOMY. IT IS OUR VIEW THAT WHATEVER THE INTERNAL ORGANIZATION OF A UNION OR CHANGES MADE FROM TIME TO TIME IF MADE IN THE PROPER LAWFUL CONTEXT OF ITS CONSTITUTION SHOULD NOT NORMALLY BE A CONSIDERATION

FOR THE BOARD. IT IS HERE ALLEGED THAT THIS FACTOR TAKEN WITH THE ALLEGED CHANGE OF NAME MUST LEAD TO THE ESTABLISHMENT OF AN ENTIRELY DIFFERENT ORGANIZATION THAT THE APPLICANT PURPORTS TO BE IN THIS APPLICATION. IF WE ACCEPTED BOTH THESE PROPOSITIONS ON THEIR INTERFACE WE MIGHT COME TO THE SAME CONCLUSION AS SUGGESTED BY THE INTERVENER BUT THE MAIN QUESTION INVOLVED IN THE FIRST INSTANCE IS WHETHER THE APPLICANT HAD ACTUALLY CARRIED OUT ITS RESOLUTION TO CHANGE ITS NAME. THERE IS NO DOUBT THAT SUCH A RESOLUTION WAS PASSED AND REFERRED TO THE GENERAL EXECUTIVE BOARD, BUT IT WAS QUALIFIED BY THE TERM "PENDING LEGAL ADVICE" WHICH MUST BE CONSIDERED TO BE A REASONABLE AND PROPER COURSE OF ACTION IN SUCH A SUBSTANTIAL AND IMPORTANT MATTER FOR THE APPLICANT UNION. WE DO NOT FIND IN ANY OF THE EVIDENCE THAT SUCH LEGAL ADVICE WAS RENDERED TO THE APPLICANT AND CONCLUDE THAT ALTHOUGH THE DELAY IN DOING SO IS NOT ALTOGETHER ACCOUNTED FOR, MR. WHITESIDE'S EVIDENCE IS QUITE CLEAR THAT HE DID NOT GIVE THE ADVICE CONSIDERED TO BE NECESSARY IN THESE CIRCUMSTANCES. THE RESOLUTION ITSELF DID NOT CHANGE THE NAME AND THE CHANGE OF NAME PROPOSAL WAS NOT DEALT WITH AT THE SPECIAL CONVENTION HELD IN FEBRUARY 1968 SO THAT AT THAT TIME IT CANNOT BE SAID THE NAME OF THE APPLICANT HAD CHANGED. IT ONLY WAS SUBSEQUENT TO THESE EVENTS THAT AN ELEMENT OF CONFUSION AROSE IN THIS MATTER HAVING REGARD TO THE LETTER OF B. A. ROBINET DATED MAY 28TH AND THAT OF A. CAGE DATED MAY 14TH. SUCH CONFUSION, IF IT INDEED CAN SO BE DESCRIBED, APPEARS TO BE RESTRICTED TO THE ORIGINATORS OF THOSE LETTERS. THE EARLIER LETTER, WHILE ON ITS FACE MAY TEND TO GIVE SUPPORT TO THE INTERVENER'S CONTENTIONS CAN ONLY BE GIVEN THE WEIGHT THAT CAN BE PROPERLY ACCORDED IT, I.E. AS A DOCUMENT EMANATING FROM AN OFFICE OF ONE OF MANY LOCALS. SURELY IT IS NOT SERIOUSLY SUGGESTED THAT SUCH A PERSON CAN BY HIS WORDS OR ACTIONS ALONE BIND THE ENTIRE ORGANIZATION. MR. ROBINET'S LETTER INDICATES THAT THE CHANGE OF NAME WAS PASSED AT THE CONVENTION, WHICH IS SUBSTANTIALLY CORRECT, BUT GOES ON TO STATE THAT THE NAME OF THE UNION IS STILL THE CANADIAN UNION OF OPERATING ENGINEERS AND REFERS TO THE NECESSITY OF APPROVAL BY THE ONTARIO LABOUR RELATIONS BOARD FOR SUCH A CHANGE. WHATEVER ELSE THIS LETTER MAY MEAN IT IS PATENTLY CLEAR THAT HIS VIEW WAS THAT THE NAME HAD NOT BEEN CHANGED. WE CANNOT ACCEPT THE PROPOSITION THAT THE APPLICANT'S CONSTITUTION WAS AMENDED TO THE FORM ATTACHED TO CAGE'S LETTER AND ARE SATISFIED FROM MR. WHITESIDE'S EVIDENCE THAT THIS WAS A DRAFT ONLY FOR THE PERUSAL OF THE MEMBERS PENDING FURTHER CONSULTATION AND ONLY THEREAFTER ACCORDING TO SOULIERE, A REFERENDUM VOTE OF THE MEMBERSHIP WOULD BE TAKEN WITH RESPECT TO THE PROPOSED CHANGES. IN OUR VIEW THIS IS A FAR MORE PLAUSIBLE ACCOUNT OF THE CIRCUMSTANCES HAVING REGARD TO THE IMPORTANT CONSEQUENCES THAT MIGHT FOLLOW FROM SUCH A STEP. THE DELAY IN OBTAINING LEGAL ADVICE FOLLOWING THE THIRD DRAFT IS NOT REALLY EXPLAINED, HOWEVER, WE CAN FIND NO EVIDENCE OF ACTIONS TAKEN BY THE APPLICANT INDEPENDENTLY OF SUCH LEGAL ADVICE IN REGARD TO THE ALLEGATIONS OF THE INTERVENER. WE ARE SATISFIED THAT THE INTENTION OF THE APPLICANT WAS TO ACT ONLY ON LEGAL ADVICE WHICH IT HAD REGARDLESS OF ANY DELAY, NOT OBTAINED BY THE DATE OF THIS APPLICATION.

7. WE ARE NOT PERSUADED FROM THE EVIDENCE THAT THE INTERVENER HAD SATISFIED THE ONUS ON IT TO ESTABLISH THAT THE APPLICANT CHANGED ITS NAME OR OTHERWISE ALTERED ITS CONSTITUTION TO CREATE AN ORGANIZATION DIFFERENT THAN THE PRESENT APPLICANT. ACCORDINGLY, THE CHARGES OF THE INTERVENOR REFERRED TO ABOVE ARE DISMISSED.

8. WE FIND THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

9. HAVING REGARD TO THE REQUEST OF THE APPLICANT AT THE HEARING TO WITHDRAW THIS APPLICATION, AND HAVING REGARD TO THE TIME THE REQUEST WAS MADE, THE BOARD FOLLOWING ITS USUAL PRACTICE, HEREBY DISMISSES THE APPLICATION.

DISSENT OF BOARD MEMBER J.E.C. ROBINSON: APRIL 11, 1969.

I DISSENT. HAVING REGARD TO THE PASSAGE OF THE RESOLUTION AT THE JUNE, 1967, CONVENTION AND THE SUBSTANTIAL STRUCTURAL CHANGES IN THE UNION EFFECTED AT THE SPECIAL CONVENTION OF THE UNION HELD IN FEBRUARY, 1968, I WOULD HAVE FOUND THAT A NEW ENTITY HAD BEEN CREATED KNOWN AS CANADIAN UNION OF OPERATING ENGINEERS & ALLIED TRADES (C.U.O.E. & A.T.).

WHILE THE RESOLUTION CHANGING THE NAME OF THE UNION AT THE JUNE, 1967 CONVENTION HAD THE RIDER "PENDING LEGAL ADVICE" ATTACHED TO IT IN THE MINUTES OF THAT CONVENTION, I AM OF THE OPINION THAT THE NAME WAS EFFECTUALLY CHANGED.

INDEED THE LAWYER FOR THE UNION IN EVIDENCE, WHICH MUST BE CONSIDERED AS SELF SERVING, TESTIFIED THAT HE WAS AWAITING WORD THAT THE NAME AND STRUCTURAL CHANGES HAD BEEN MADE.

THE DOCUMENTARY EVIDENCE FORWARDED BY B. A. ROBINET, THE GENERAL SECRETARY OF THE CANADIAN UNION OF OPERATING ENGINEERS, AND THE PERSON WHO WOULD OF NECESSITY, BE MOST CONVERSANT WITH SUCH CHANGES, SUGGESTED THAT THE RESOLUTION PASSING THE NAME CHANGE WAS NO LONGER DEPENDANT UPON THE OBTAINING OF LEGAL ADVICE.

SIMILARLY, THE LETTER OF ARTHUR CAGE ENCLOSING A COPY OF THE CONSTITUTION OF "CANADIAN UNION OF OPERATING ENGINEERS & ALLIED TRADES" TO ALL UNION STEWARDS WOULD SUBSTANTIATE THE FACT THAT THE CHANGE HAD EFFECTIVELY BEEN MADE.

ON ALL OF THE EVIDENCE SUBMITTED, THEREFORE, I CAN COME ONLY TO THE CONCLUSION THAT A NEW ENTITY WAS CREATED CALLED CANADIAN UNION OF OPERATING ENGINEERS & ALLIED TRADES. THAT BEING SO, THE APPLICATIONS FOR MEMBERSHIP IN THE INSTANT CASE ARE DEFECTIVE AND THE APPLICATION SHOULD BE DISMISSED.

15111-68-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 648, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. PARNELL FOODS LIMITED (RESPONDENT).

- AND -

15148-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO: CLC (APPLICANT) v. PARNELL FOODS LIMITED (RESPONDENT) v. MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (INTERVENER).

BEFORE: O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: M. J. SOMERVILLE, G. HARRISON FOR THE MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AND T. F. STORIE, D. PARNELL FOR THE RESPONDENT.

DECISION OF O.B. SHIME, VICE-CHAIRMAN: APRIL 1, 1969.

1. THIS IS AN APPLICATION FOR CERTIFICATION BROUGHT BY RETAIL, WHOLESALE AND DEPARTMENT STORE UNION (HEREINAFTER REFERRED TO AS "RETAIL WHOLESALE"), WHEREIN PARNELL FOODS LIMITED WAS THE RESPONDENT.

2. AT THE OUTSET OF THE APPLICATION, COUNSEL FOR THE RESPONDENT ADVISED THE BOARD THAT PARNELL FOODS LIMITED WAS A RECENTLY AMALGAMATED COMPANY WHICH HAD RESULTED FROM THE AMALGAMATION OF PARNELL FOODS (LONDON) LTD. AND PARNELL VENDING LIMITED.

3. CONTEMPORANEOUS WITH THE APPLICATION BY RETAIL WHOLESALE THERE WAS FILED AN APPLICATION FOR CERTIFICATION BY THE MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (HEREINAFTER REFERRED TO AS "TEAMSTERS") WITH RESPECT TO PARNELL VENDING LIMITED.

4. BOTH CERTIFICATION APPLICATIONS WERE SCHEDULED FOR HEARING ON THE SAME DATE. THE TEAMSTERS HAD INTERVENED IN THE APPLICATION BROUGHT BY RETAIL WHOLESALE BECAUSE THEY HAD BEEN PREVIOUSLY CERTIFIED AS BARGAINING AGENT FOR "ALL EMPLOYEES OF PARNELL VENDING LTD." HAD THE TEAMSTERS NOT BEEN A PARTY TO THE RETAIL WHOLESALE APPLICATION THE BOARD MIGHT HAVE POSTPONED THE TEAMSTERS' APPLICATION PURSUANT TO SECTION 77(3)(B) OF THE LABOUR RELATIONS ACT AND DEALT FIRST WITH THE APPLICATION BY RETAIL WHOLESALE. HOWEVER, THE OUTSTANDING BARGAINING RIGHTS WHICH HAD BEEN HELD BY THE TEAMSTERS WERE IN ISSUE AS A RESULT OF THE BOARD HAVING TO DETERMINE A PROPER BARGAINING UNIT AND FURTHER BECAUSE OF THE AMALGAMATION BOTH APPLICATIONS WERE CONSOLIDATED.

5. RETAIL WHOLESALE WERE SEEKING CERTIFICATION AS BARGAINING AGENT FOR "ALL EMPLOYEES OF PARNELL FOODS LIMITED IN THE COUNTY OF MIDDLESEX, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD" (HEREINAFTER REFERRED TO AS THE "ALL EMPLOYEE UNIT"). THE TEAMSTERS WERE SEEKING CERTIFICATION AS BARGAINING AGENT FOR ALL EMPLOYEES OF PARNELL VENDING LIMITED BUT AFTER BOTH APPLICATIONS WERE CONSOLIDATED FOR HEARING AND THE NAME OF THE RESPONDENT WAS AMENDED, THE TEAMSTERS ADVISED THE BOARD THAT THEY HAD SOUGHT TO BE CERTIFIED WITH RESPECT TO THE VENDING EMPLOYEES ONLY AND THAT AS A RESULT OF THE AMALGAMATION THEY WERE NOW SEEKING TO BE CERTIFIED WITH RESPECT TO THOSE SAME EMPLOYEES AND THEREFORE REQUESTED THAT THE BARGAINING UNIT PROPOSED BE AMENDED AS FOLLOWS: "ALL EMPLOYEES OF THE RESPONDENT (PARNELL FOODS LIMITED) IN THE VENDING DIVISION IN THE COUNTY OF MIDDLESEX, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD," (HEREINAFTER REFERRED TO AS THE "VENDING UNIT"). THE RESPONDENT OPPOSED THE AMENDMENT; HOWEVER, THE AMENDMENT WAS ALLOWED.

6. IN THE ALTERNATIVE THE TEAMSTERS REQUESTED THAT THE BOARD DECLARE THAT THEY HOLD BARGAINING RIGHTS FOR THE VENDING EMPLOYEES AS A RESULT OF THEIR PREVIOUS CERTIFICATE.

7. BECAUSE OF THE COMPETITION BETWEEN THE APPLICANT UNIONS IT IS NECESSARY TO ASCERTAIN WHETHER AN ALL EMPLOYEE UNIT IS APPROPRIATE, OR WHETHER A VENDING UNIT MAY BE SEVERED FROM AN ALL EMPLOYEE UNIT THEREBY FORMING TWO SEPARATE BARGAINING UNITS.

8. THE LIST OF EMPLOYEES FILED BY THE RESPONDENT CONTAINED THE NAMES OF 72 EMPLOYEES AND IT APPEARS THAT 21 OF THOSE EMPLOYEES ARE EMPLOYED IN THE VENDING DIVISION. THE MEMBERSHIP EVIDENCE FILED BY RETAIL WHOLESALE INDICATES THAT 47 OF THE EMPLOYEES ARE MEMBERS OF RETAIL WHOLESALE AND THAT 6 OF THESE 47 EMPLOYEES ARE EMPLOYED IN THE VENDING DIVISION. THE MEMBERSHIP EVIDENCE FILED BY THE TEAMSTERS INDICATES THAT 12 OF THE EMPLOYEES ARE MEMBERS OF THE TEAMSTERS AND ALL OF THE TEAMSTERS' MEMBERS ARE EMPLOYED IN THE VENDING DIVISION. IT IS THEREFORE EVIDENT THAT RETAIL WHOLESALE ARE ENTITLED TO BE CERTIFIED FOR EMPLOYEES IN AN "ALL EMPLOYEE UNIT" AND THAT THE TEAMSTERS ARE ENTITLED TO BE CERTIFIED FOR ALL EMPLOYEES IN THE "VENDING UNIT" SHOULD THE SAME BE APPROPRIATE.

9. THE BOARD HAS HEARD EVIDENCE AND ARGUMENT FROM ALL PARTIES DIRECTED TO THE APPROPRIATENESS OF THE BARGAINING UNIT. THERE ARE A NUMBER OF FACTORS THAT INDICATE THAT AN "ALL EMPLOYEE UNIT" MAY BE APPROPRIATE, WHILE THERE ARE OTHER FACTORS WHICH INDICATE THAT THERE MAY BE TWO APPROPRIATE BARGAINING UNITS, A VENDING UNIT AND A UNIT COMPOSED OF THE REMAINING EMPLOYEES.

10. THE VENDING DIVISION IS SEPARATE AND THE EVIDENCE INDICATED VENDING EMPLOYEES DIFFER FROM ALL THE OTHER EMPLOYEES IN THE AREAS FOLLOWING. THEY HAVE DIFFERENT SKILLS, WEAR DIFFERENT UNIFORMS, DRIVE DISTINCTIVE TRUCKS, HAVE DIFFERENT HOURS OF WORK, ARE PAID ON A SEPARATE BASIS, HAVE SEPARATE WAREHOUSES AND SUPERVISORY STAFF, HAVE SEPARATE BULLETIN BOARDS, OCCUPY A SEPARATE PORTION OF THE BUILDING THAN THAT OCCUPIED BY THE REMAINING DIVISIONS AND ELECT A SEPARATE BARGAINING COMMITTEE TO DEAL WITH MANAGEMENT. THE FORMER CHIEF OFFICER OF PARRELL VENDING LIMITED CONTINUES AS THE CHIEF OFFICER FOR THE VENDING DIVISION WITHOUT ANY CHANGE IN HIS FUNCTIONS AND THERE IS NO INTERMINGLING OF EMPLOYEES OF THE VENDING DIVISION WITH OTHER EMPLOYEES. THE EMPLOYEES OF THE VENDING DIVISION THEREFORE DO NOT SHARE A COMMUNITY OF INTEREST WITH THE OTHER EMPLOYEES WITH RESPECT TO WAGES, HOURS AND WORKING CONDITIONS AND THESE ARE SIGNIFICANT FACTORS IN DETERMINING THE APPROPRIATENESS OF THE BARGAINING UNIT.

11. THE VENDING EMPLOYEES DRIVE TRUCKS AND ARE "OUTSIDE" EMPLOYEES AND THERE IS ALSO A MOBILE UNIT COMPOSED OF TRUCK-DRIVERS WHO ARE "OUTSIDE" EMPLOYEES AND WHO ARE "DRIVER-SALESMEN". MR. PARRELL TESTIFYING ON BEHALF OF THE RESPONDENT STATED "THAT THERE WAS NO PARTICULAR RELATIONSHIP BETWEEN PEOPLE IN THE VENDING OPERATION AND PEOPLE ENGAGED IN THE OTHER OPERATIONS CARRIED ON BY THE COMPANY INCLUDING THE MOBILE OPERATION". IT WAS FURTHER ADMITTED THAT THAT THERE WAS AN ASCERTAINABLE VENDING DIVISION.

12. IN PLAZA PROVISION CO. CASE 134 NLRB 910, THE MAJORITY OF THE BOARD IN THAT CASE INDICATED:

"OUR EXPERIENCE HAS SHOWN US THAT THE DUTIES OF EMPLOYEES WHO DRIVE TRUCK OR AUTOMOBILES AND DISTRIBUTE PRODUCTS OF THEIR EMPLOYER FROM THEIR VEHICLES MAY VARY GREATLY, DEPENDING UPON THE GIVEN EMPLOYER'S SALES AND DISTRIBUTION POLICIES AND PRACTICES. IN SOME INSTANCES, THE EMPLOYEES HAVE LITTLE OR NO FUNCTION IN MAKING OR PROMOTING SALES OF THE EMPLOYER'S PRODUCTS BUT ARE ESSENTIALLY DELIVERYMEN OR TRUCKDRIVERS. IN OTHERS, THEIR FUNCTION IS CLEARLY SELLING AND SALES PROMOTION, AND DRIVING VEHICLES IS MERELY AN INCIDENT OF SUCH FUNCTION."

"WE BELIEVE THAT WHERE THE EMPLOYEES IN QUESTION ARE SHOWN TO BE ENGAGED IN SELLING THEIR EMPLOYER'S PRODUCTS AND THEY DRIVE VEHICLES AND MAKE DELIVERIES OF SUCH PRODUCTS AS AN INCIDENT OF SUCH SALES ACTIVITY, THEY ARE ESSENTIALLY SALESMEN AND HAVE INTERESTS MORE CLOSELY ALLIED TO SALESMEN IN GENERAL THAN TO TRUCKDRIVERS OR TO PRODUCTION AND MAINTENANCE OR WAREHOUSE EMPLOYEES."

THE BOARD FURTHER INDICATED:

"ALL SALESMEN, INCLUDING THOSE WHOSE PLACEMENT IS IN DISPUTE, ARE PAID A SALARY PLUS INCENTIVE BONUSES IN CONNECTION WITH SALES PROMOTIONS. WAREHOUSEMEN AND TRUCKDRIVERS RECEIVE A STRAIGHT SALARY. THERE IS NO INTERCHANGE BETWEEN ROUTE OR SPECIAL SALESMEN AND WAREHOUSE EMPLOYEES OR TRUCKDRIVERS. FRINGE BENEFITS, SUCH AS VACATIONS, SICK LEAVE, ACCIDENT INSURANCE, AND CHRISTMAS BONUSES, ARE THE SAME FOR ALL EMPLOYEES."

"ON THE BASIS OF THE FOREGOING AND THE ENTIRE RECORD, WE ARE OF THE OPINION THAT THE ROUTE AND SPECIAL SALESMEN INVOLVED ARE TRULY SALESMEN. CONTRARY TO THE EMPLOYER, WE ARE NOT PERSUASSED THAT THEY ARE MERELY DELIVERYMEN OR TRUCKDRIVERS. WE FIND, THEREFORE, THAT THE INTERESTS OF THE ROUTE AND SPECIAL SALESMEN ARE DIVERSE FROM THOSE OF THE WAREHOUSEMEN AND TRUCKDRIVERS AND WE SHALL EXCLUDE THEM FROM THE REQUESTED UNIT."

13. THE DRIVERS IN THE MOBILE UNIT ARE IN EFFECT DRIVER-SALESMEN WHOSE FUNCTIONS ARE SIMILAR TO THE DRIVER-SALESMEN IN THE PLAZA PROVISION CASE, AND ACCORDINGLY ARE CAPABLE OF FORMING A BARGAINING UNIT SEPARATE FROM THE VENDING UNIT.

14. IN ADDITION, THIS BOARD HAD DETERMINED PREVIOUSLY THAT THE UNIT OF EMPLOYEES EMPLOYED BY PARNELL VENDING LTD. WAS APPROPRIATE FOR COLLECTIVE BARGAINING. THESE EMPLOYEES PRESENTLY EXERCISE THE SAME FUNCTIONS, IN THE SAME MANNER AND THE SAME PLACE. THERE IS NO CHANGE IN THE FACT SITUATION WHATSOEVER, INCLUDING THE PHYSICAL LOCATION, AND I CANNOT FIND THAT A CHANGE IN THE CORPORATE NAME AS A RESULT OF THE AMALGAMATION WITHOUT ANY OTHER CHANGE, ALTERS THIS SITUATION SO THAT A UNIT OF EMPLOYEES ONCE APPROPRIATE FOR COLLECTIVE BARGAINING NOW BECOMES INAPPROPRIATE. I FIND THAT THE VENDING UNIT IS A FUNCTIONALLY INDEPENDENT ENTITY AND THAT THE EMPLOYEES ARE A RECOGNIZABLE, COHESIVE GROUP. SEE GOVERNORS OF THE UNIVERSITY OF TORONTO CASE, BOARD FILE NO. 12984-67-R, FEBRUARY 5TH, 1969.

15. I FIND THAT IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE THAT THE EMPLOYEES IN THE VENDING UNIT ARE A UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING AND ACCORDINGLY, MAY BE SEVERED FROM THE ALL EMPLOYEE UNIT THEREBY CREATING TWO BARGAINING UNITS.

16. HOWEVER, IN APPLICATIONS FOR CERTIFICATION ALTHOUGH SECTION 6(1) PROVIDES THAT THE BOARD SHALL DETERMINE THE UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING, THE BOARD HAS NEVER CONSTRUED THAT SECTION TO MEAN THAT THERE IS ONLY ONE APPROPRIATE BARGAINING UNIT IN EACH CASE. NORTHERN ELECTRIC COMPANY LIMITED BOARD FILE NO. 14086-67-R MARCH 24TH, 1969. NOR IS THE BOARD IN AN APPLICATION FOR CERTIFICATION REQUIRED TO DETERMINE THE MOST APPROPRIATE OR MORE APPROPRIATE UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING. THE BOARD MUST DETERMINE IN AN APPLICATION WHETHER OR NOT THERE IS A UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING. THE COMPLEXITIES OF MODERN INDUSTRY DO NOT LEND THEMSELVES TO SIMPLE ASCERTAINMENT OF BARGAINING UNITS. SEE THE GOVERNORS OF THE UNIVERSITY OF TORONTO CASE (SUPRA); AUTOMATIC ELECTRIC (CANADA) LIMITED CASE, BOARD FILE NO. 14325-67-R, FEBRUARY 5TH, 1969. INDEED, IN CERTAIN CASES VARIOUS CRITERION USED BY THE BOARD TO ASCERTAIN BARGAINING UNITS MAY COME INTO CONFLICT AND IT THEN BECOMES A MATTER OF WEIGHING THE COMPETING CRITERION AND INTERESTS.

17. ONCE THE INITIAL QUESTIONS ARE RESOLVED AND IF THE BOARD FINDS THERE IS MORE THAN ONE UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING THEN IN THE INTERESTS OF INDUSTRIAL PEACE IT HAS A WIDE DISCRETION IN CHOOSING A UNIT OR UNITS THAT IT WILL CERTIFY. THEREFORE, IF AN APPLICATION WAS MADE FOR A UNIT OF

EMPLOYEES IN THE VENDING DIVISION ONLY, THE BOARD MIGHT HAVE BEEN OBLIGATED TO FIND THAT UNIT APPROPRIATE AND GRANTED CERTIFICATION. IN THIS CASE, HAVING FOUND MORE THAN ONE UNIT OF EMPLOYEES TO BE APPROPRIATE FOR COLLECTIVE BARGAINING THERE IS A DISCRETION AS TO WHETHER AN "ALL EMPLOYEE UNIT" MAY BE CERTIFIED OR WHETHER TWO SEPARATE BARGAINING UNITS MAY BE CERTIFIED.

18. IN EXERCISING MY DISCRETION THERE IS ONE FACTOR THAT CAUSES SOME CONCERN AND THAT IS THE SEPARATE BARGAINING COMMITTEES IN THE RESPONDENT'S ORGANIZATION REPRESENTING THE VARIOUS GROUPS OF EMPLOYEES, INCLUDING A SEPARATE BARGAINING COMMITTEE REPRESENTING "VENDING" EMPLOYEES. WHERE PERSONS CHOOSE TO BARGAIN SEPARATELY AND IN FACT CREATE A FRAGMENTED COLLECTIVE BARGAINING SITUATION THEY CANNOT COMPLAIN IF THE BOARD LOOKS TO THEIR BARGAINING HISTORY AS ONE OF THE FACTORS IN EITHER DETERMINING OR SELECTING A UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING. HAD THERE BEEN EVIDENCE IN THIS CASE OF MEANINGFUL COLLECTIVE BARGAINING BY THE SEPARATE BARGAINING COMMITTEES I MIGHT HAVE BEEN INCLINED TO VIEW THAT TWO BARGAINING UNITS WERE PREFERABLE. HOWEVER, THERE IS NO EVIDENCE OF ANY MEANINGFUL BARGAINING BY THE SEPARATE BARGAINING COMMITTEES.

19. IN ADDITION, DURING THE COURSE OF THE PROCEEDINGS THE TEAMSTERS ADVISED THE BOARD THAT THEY HAD ABANDONED THEIR BARGAINING RIGHTS OBTAINED THROUGH CERTIFICATION AND THAT THEY WERE NOT GOING TO ADDUCE EVIDENCE WITH RESPECT TO THOSE RIGHTS.

20. HAVING REGARD TO THE FACTS OF THIS CASE AND CONSIDERING THE BOARD'S POLICIES AS EXPRESSED IN PARA. 4 OF THE DECISION OF BOARD MEMBERS O. HODGES AND H. IRWIN, I FIND THAT AN ALL EMPLOYEE UNIT IS PREFERABLE. IT MAY BE THAT IN SIMILAR CASES A VOTE MIGHT BE ORDERED TO ENABLE THE EMPLOYEES TO EXPRESS THEIR WISHES IN DETERMINING OR SELECTING A BARGAINING UNIT.

21. I THEREFORE DECLARE THAT THE TEAMSTERS HAVE ABANDONED THEIR BARGAINING RIGHTS WITH RESPECT TO THE EMPLOYEES IN THE "VENDING" UNIT AND THAT THE APPLICATION INSOFAR AS IT APPLIES TO THE TEAMSTERS IS DISMISSED.

22. I FIND THAT RETAIL WHOLESALE IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT AND I FURTHER FIND THAT ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

23. I AM SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE ME THAT MORE THAN FIFTY FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE AFORESAID BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE WERE MEMBERS OF RETAIL WHOLESALE ON OCTOBER 4TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE ON WHICH THE BOARD DETERMINES UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

24. A CERTIFICATE WILL ISSUE TO RETAIL WHOLESALE.

DECISION OF BOARD MEMBERS O. HODGES AND H.F. IRWIN: APRIL 1, 1969.

1. THE FACTS AS SET OUT IN PARAGRAPHS 1 TO 7 IN THE DECISION OF THE VICE-CHAIRMAN ARE ACCURATE AND NEED NOT BE REPEATED.

2. IN REGINA V. BEAMISH 59 D.L.R. (2d) 6 1966 2 O.R. 867; 1967 1 C.C.C. 301 IN DEALING WITH AN AMALGAMATION OF COMPANIES UNDER THE ONTARIO CORPORATION ACT, R.S.O. 1960 JESSUP. J. CONSIDERED WHETHER A CORPORATION HAD CEASED TO EXIST AS A CORPORATE ENTITY SUBSEQUENT TO AMALGAMATION. HE CONCLUDED:

"I REACHED THE CONCLUSION ... THAT THE AMALGAMATING COMPANY IN WHOSE ENTITY THE AMALGAMATING COMPANIES CONTINUE UNDER SECTION 96(4), IS A SEPARATE ENTITY AND THAT THE AMALGAMATING COMPANIES CEASE TO HAVE ENTITY OR IDENTITY ONCE AMALGAMATION IS ACCOMPLISHED."

(EMPHASIS ADDED)

CONSEQUENTLY, WE FIND THAT PARNELL FOODS (LONDON) LIMITED AND PARNELL VENDING LIMITED, THE AMALGAMATING COMPANIES IN THE INSTANT CASE, HAD CEASED TO HAVE ENTITY OR IDENTITY AT THE TIME THIS APPLICATION WAS MADE. THE ONLY COMPANY, THEREFORE, WITH WHICH WE ARE HERE CONCERNED IS THE RESPONDENT, PARNELL FOODS LIMITED AS IT PRESENTLY EXISTS.

3. RETAIL WHOLESALE HAS APPLIED FOR THE ALL EMPLOYEE UNIT. IF IT WERE THE ONLY APPLICANT, THE BOARD, IN ACCORDANCE WITH ITS USUAL POLICY, WOULD FIND THE ALL EMPLOYEE UNIT TO BE APPROPRIATE. HOWEVER, AS THE TEAMSTERS HAVE APPLIED TO BE CERTIFIED FOR THE EMPLOYEES IN THE VENDING UNIT ONLY, IT BECOMES NECESSARY FOR THE BOARD TO DETERMINE IF SUCH A UNIT IS APPROPRIATE IN ALL THE CIRCUMSTANCES OF THIS CASE.

4. TO HELP ESTABLISH A HEALTHY CLIMATE FOR COLLECTIVE BARGAINING, THE BOARD HAS CONSISTENTLY OPPOSED THE FRAGMENTATION OF ALL EMPLOYEE BARGAINING UNITS IN INDUSTRIAL ESTABLISHMENTS ESPECIALLY WHEN AS HERE, THERE IS ONLY ONE LOCATION IN THE MUNICIPALITY. HOWEVER, IN DETERMINING THE APPROPRIATE BARGAINING UNIT IN DAIRIES, BAKERIES AND LAUNDRIES WHERE DRIVER-SALESMEN AND/OR OUTSIDE TRUCK-DRIVERS ARE EMPLOYED, THE BOARD, WHEN IT DEEMED IT TO BE APPROPRIATE, HAS DESIGNATED SEPARATE INSIDE AND OUTSIDE UNITS. THE OUTSIDE UNITS HAVE USUALLY CONSISTED OF ALL DRIVER-SALESMEN AND/OR TRUCK-DRIVERS AND GARAGE EMPLOYEES AS THE CASE MAY BE. IN THE INSTANT CASE, WE FIND THE OUTSIDE UNIT MUST INCLUDE ALL SUCH EMPLOYEES IN THE VENDING DIVISION AND FOOD DIVISION COMBINED AND NOT THE OUTSIDE EMPLOYEES IN THE VENDING DIVISION OR THE FOOD DIVISION SEPARATELY, WHICH MIGHT RESULT IN TWO INSIDE AND TWO OUTSIDE BARGAINING UNITS.

5. WE FIND THAT THE TEAMSTERS IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

6. WE ARE SATISFIED ON THE BASIS OF ALL THE EVIDENCE THAT LESS THAN FORTY FIVE PER CENT OF ALL THE EMPLOYEES OF THE RESPONDENT IN THIS OUTSIDE UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE TEAMSTERS ON SEPTEMBER 26TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE ACT, THE APPLICATION OF THE TEAMSTERS IS ACCORDINGLY DISMISSED.

7. WE THEREFORE DECLARE THAT THE TEAMSTERS HAVE ABANDONED THEIR BARGAINING RIGHTS WITH RESPECT TO THE "VENDING" UNIT.

8. WE FIND THAT RETAIL WHOLESALE IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

9. WE FURTHER FIND THAT ALL EMPLOYEES OF THE RESPONDENT AT LONDON SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

10. WE ARE SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF RETAIL WHOLESALE ON OCTOBER 4TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

11. A CERTIFICATE WILL ISSUE TO RETAIL WHOLESALE.

15496-68-R: INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION (APPLICANT) v. CAROUSEL INN OF LONDON LIMITED (RESPONDENT).

BEFORE: H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: EDWARD C. WITTHAMES FOR THE APPLICANT, AND B.W. BINNING, DAVID COIA FOR THE RESPONDENT.

DECISION OF THE BOARD: APRIL 2, 1969.

• • •

3. AT THE HEARING COUNSEL FOR THE RESPONDENT CHALLENGED THE RIGHT OF THE APPLICANT TO BE CERTIFIED AS BARGAINING AGENT FOR PERSONS EMPLOYED IN THE HOTEL INDUSTRY. THE APPLICANT'S POSITION WAS THAT IT HAD STATUS AS A TRADE UNION BEFORE THIS BOARD AND THAT THIS WAS ALL THAT WAS REQUIRED OF IT.

4. THERE HAVE BEEN A NUMBER OF PREVIOUS DECISIONS OF THE BOARD RELATING TO A LIKE ISSUE AND WE REFER PARTICULARLY TO THE FOLLOWING: METROPOLITAN LIFE INSURANCE COMPANY CASE, O.L.R.B. MONTHLY REPORT, AUGUST 1967, PAGE 437; VERSAFOOD SERVICES LIMITED, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1967, PAGE 539 AND HIGH SCHOOL BOARD OF EASTVIEW O.L.R.B. MONTHLY REPORT, MARCH 1967, PAGE 957. CANADIAN CANNERS LIMITED, O.L.R.B. MONTHLY REPORT, MAY 1965, PAGE 126. A COPY OF THE CONSTITUTION AND RULES OF ORDER OF THE APPLICANT WAS FILED WITH THE BOARD UNDER THE GENERAL FILING PROVISIONS OF THE LABOUR RELATIONS ACT WHICH SETS OUT THE MEMBERSHIP AND JURISDICTIONAL QUALIFICATIONS IN WHICH SECTION 2 OF ARTICLE 1 IS AS FOLLOWS:

THIS INTERNATIONAL UNION SHALL HAVE JURISDICTION OVER ALL WORKERS ENGAGED IN THE PRODUCTION, PROCESSING AND ASSEMBLING OF CAST, MOLDED AND RELATED AND/OR SUBSTITUTED PRODUCTS AND--IN PROCESSING RELATED TO THE PRODUCTION OF CASTINGS OR THEIR SUBSTITUTES.

CLEARLY THE PERSONS TO WHOM THIS APPLICATION IS DIRECTED DO NOT FALL WITHIN ANY OF THE ABOVE CLASSIFICATIONS. WITHOUT EVIDENCE TO THE CONTRARY WE FIND THAT THERE IS AN EXPRESS EXCLUSION IN THE CONSTITUTION WITH RESPECT TO THE CLASSIFICATIONS OF EMPLOYEES INVOLVED IN THIS APPLICATION. THE BOARD'S POLICY IN REGARD TO THIS SITUATION CLEARLY ENUNCIATED IN THE METROPOLITAN CASE [SUPRA] IN PART AS FOLLOWS:

"13. UNQUESTIONABLY IN CONSIDERING THE 'ELIGIBILITY' PROBLEM, THE BOARD HAS TAKEN INTO CONSIDERATION THE CONSTITUTION OF THE PARTICULAR UNION IN QUESTION. IT IS ONE OF THE FACTORS WHICH THE BOARD LOOKS AT IN DETERMINING WHETHER A PERSON IS A MEMBER OF THE UNION. THUS, IF THERE IS A CLEAR-CUT PROHIBITION OR EXPRESS EXCLUSION WITH RESPECT TO A CERTAIN CLASS OR PERSONS (SEE CANADIAN CANNERS LIMITED CASE, O.L.R.B. MONTHLY REPORT, MAY 1965, p. 126, ALDERSHOT CONTRACTORS EQUIPMENT RENTAL LIMITED CASE, O.L.R.B. MONTHLY REPORT, JUNE 1965, p. 170), THE BOARD WILL REFUSE TO CERTIFY AN APPLICANT UNION IF THE CLASS OF PERSONS IN QUESTION IS TO BE INCLUDED IN THE BARGAINING UNIT WHICH THE BOARD FINDS TO BE APPROPRIATE FOR COLLECTIVE BARGAINING. THE REASON FOR THIS IS THAT A TRADE UNION IS CERTIFIED AS BARGAINING AGENT FOR ALL EMPLOYEES IN THE BARGAINING UNIT WHICH THE BOARD FINDS TO BE APPROPRIATE AND, IF THE UNION IN QUESTION WILL NOT ADMIT TO MEMBERSHIP ALL OF THE PERSONS FOR WHOM IT WOULD BE CERTIFIED TO REPRESENT, THE BOARD WILL REFUSE CERTIFICATION IN SUCH CIRCUMSTANCES. TO THAT EXTENT AND FOR THAT PURPOSE, THEN, THE BOARD DOES HAVE REGARD TO UNION CONSTITUTIONS.

14. ON THE OTHER HAND, THE BOARD HAS ALSO SAID IF THERE IS NO EXPRESS EXCLUSION (CF. ALDERSHOT CONTRACTORS EQUIPMENT RENTALS LIMITED, SUPRA, N. D. APPLEGATE LTD. CASE, O.L.R.B. MONTHLY REPORT, MAY 1963, p. 104) OF A PARTICULAR CLASS OR CLASSES OF EMPLOYEES AFFECTED BY THE APPLICATION, IT WILL NOT ENTERTAIN AN OBJECTION TO THE APPLICATION BASED ON THE ELIGIBILITY PROVISIONS OF AN APPLICANT UNION'S CONSTITUTION. IN A CASE OF THIS NATURE THE BOARD MAY ALSO HAVE REGARD TO THE INTERPRETATION WHICH RESPONSIBLE OFFICIALS OF THE UNION HAVE PLACED ON THE PROVISIONS OF THE CONSTITUTION AND TO THE PRACTICE OF THE UNION WITH RESPECT TO THE ADMISSION OF PERSONS AS MEMBERS. SEE WAYNE PUMP CANADA LIMITED, O.L.R.B. MONTHLY REPORT, OCTOBER 1966, p. 489; JOHN E. RIDDELL AND SON LTD. CASE, 2 C.L.S. 76-564.

15. FURTHERMORE, EVEN WHERE THERE IS AN EXPRESS EXCLUSION IN A UNION CONSTITUTION, IT IS IMPLICIT IN THE CANADIAN CANNERS LIMITED CASE, SUPRA, THAT THE INTERPRETATION PLACED ON THE CONSTITUTION BY THE UNION'S RESPONSIBLE OFFICIALS OR PROOF OF UNEQUIVOCAL PAST PRACTICES OF ADMISSION AS MEMBERS OF PERSONS COMING WITHIN THE EXCLUSIONARY CLASS WILL OVERCOME THE LANGUAGE OF THE CONSTITUTION. THERE IS NO DOUBT IN OUR MINDS THAT THIS ACCURATELY REFLECTS BOARD POLICY AND, FURTHER, THAT THE HIGH SCHOOL BOARD OF EASTVIEW CASE IS IN LINE WITH THIS POLICY."

5. ON THIS POLICY WITH RESPECT TO MEMBERSHIP QUALIFICATIONS IN THE ABSENCE OF EVIDENCE OF PAST PRACTICE ON THE PART OF THE APPLICANT OF TAKING SUCH EMPLOYEES INTO MEMBERSHIP WE MUST FIND THAT THE APPLICANT CANNOT ACCEPT INTO MEMBERSHIP THE EMPLOYEES OF THE RESPONDENT FOR WHOM IT IS SEEKING CERTIFICATION IN THIS APPLICATION.

6. THIS APPLICATION IS ACCORDINGLY DISMISSED.

REASONS FOR DECISION OF BOARD MEMBER J.E.C. ROBINSON: APRIL 2, 1969.

WHILE MY EARLIER DISSENTS IN THIS REGARD REFLECT MY DISAGREEMENT WITH THE POLICY OF THE BOARD AS IT PERTAINS TO UNION CONSTITUTIONS, I DO AGREE THAT THE EXCERPTS TAKEN FROM THE METROPOLITAN LIFE CASE [SUPRA] CORRECTLY SET OUT SUCH POLICY. I DO AGREE ALSO THAT IN APPLYING THAT POLICY, THIS APPLICATION MUST BE DISMISSED.

DECISION OF BOARD MEMBER O. HODGES: APRIL 2, 1969.

A COPY OF THE CONSTITUTION AND RULES OF ORDER OF THE APPLICANT UNION WHICH SETS OUT THE MEMBERSHIP AND JURISDICTIONAL QUALIFICATIONS IS ON FILE UNDER THE GENERAL FILING PROVISIONS OF THE LABOUR RELATIONS ACT. IT IS DATED JULY 31ST, 1961, AND IS THE MOST RECENT SO FILED. IT IS NOT KNOWN WHETHER THIS CONSTITUTION HAS BEEN AMENDED.

IN ADDITION TO ARTICLE 1, SECTION 2, OF THIS CONSTITUTION REFERRED TO BY THE MAJORITY, ARTICLE VII, SECTION 78 AND 80 APPEAR TO BE RELEVANT. THESE SECTIONS ARE:

ARTICLE VII, SECTION 78. -"ANY PERSON WHO COMES UNDER ARTICLE 1, SECTION 2, WHO IS COMPENTENT TO COMMAND A GENERAL AVERAGE OF WAGES PAID IN ANY BRANCH OR SUBDIVISION WHICH HE OR SHE IS IDENTIFIED WITH, MAY BE ADMITTED TO MEMBERSHIP AFTER COMPLYING WITH THE CONSTITUTION OF THIS INTERNATIONAL UNION AND BY-LAWS OF THE LOCAL UNION".

SECTION 80. -"IN ADMITTING TO MEMBERSHIP ALL WORKERS, THE PRESIDENT AND EXECUTIVE BOARD SHALL BE EMPOWED TO ADOPT SUCH POLICIES AS WILL, IN THEIR JUDGMENT, WORK TO THE BEST INTEREST OF OUR MEMBERS AND PROTECT OUR ORGANIZATION".

I FIND NO "EXPRESS EXCLUSION" OR "CLEAR-CUT PROHIBITION" TO WHICH REFERENCE IS MADE IN THE METROPOLITAN CASE [SUPRA], BUT ARTICLE VII AND SECTION 78 AND 80 ADD A COMPELLING INFERENCE THAT HOTEL EMPLOYEES WOULD NOT FALL WITHIN THE JURISDICTION OF THIS UNION WITHOUT ADDITIONAL SUPPORTING EVIDENCE. THERE IS NO EVIDENCE OF HOTEL OR BEVERAGE ROOM EMPLOYEES BEING REPRESENTED BY THE APPLICANT AT ANY PREVIOUS TIME AND THERE IS NO EVIDENCE THAT THE PRESIDENT AND EXECUTIVE BOARD HAS EVER DECLARED SUCH AN INTEREST. FURTHERMORE, THERE IS NO EVIDENCE OF LOCAL UNION BY-LAWS THAT WOULD APPLY TO THE EMPLOYEES IN THE INSTANT CASE.

WHILE I HAVE NO DOUBT THAT THE APPLICANT UNION WOULD STRIVE TO SECURE FOR ITS MEMBERS THE VERY BEST COLLECTIVE BARGAINING AGREEMENT WITH THE RESPONDENT EMPLOYER, THERE IS INSUFFICIENT EVIDENCE TO CLEARLY ESTABLISH THAT THOSE PERSONS WHO HAVE APPLIED FOR MEMBERSHIP FOR THE PURPOSE OF THIS APPLICATION WOULD HAVE UNQUESTIONED STATUS AS MEMBERS ACCORDING TO THE TERMS OF THE INTERNATIONAL CONSTITUTION AND MAY, THEREFORE, BE UNABLE TO BE ADMITTED INTO FULL MEMBERSHIP WITH ALL THE RIGHTS AND PRIVILEGES WHICH MEMBERS CLEARLY AND HISTORICALLY WITHIN ITS JURISDICTION ENJOY.

WITH THESE ADDED REASONS MY FINDING CONCURS WITH THE FINDING OF THE MAJORITY.

15516-68-R: OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 263 (APPLICANT) v. LORD & BURNHAM CO., LIMITED (RESPONDENT).

BEFORE: J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS P.J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: MARJORIE WHITTEN AND D. ENDERSBY FOR THE APPLICANT, SHARMAN LEARIE, Q.C., JAMES W. WHITE AND JACK B. WYLIE FOR THE RESPONDENT.

DECISION OF J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER
P.J. O'KEEFFE. APRIL 14, 1969.

1. THIS MATTER CAME ON FOR CONTINUATION OF HEARING TO HEAR THE REPRESENTATIONS OF THE PARTIES CONCERNING THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED FEBRUARY 5TH, 1969, IN THIS MATTER.

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

3. HAVING REGARD TO ALL THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT THE EMPLOYEES OF THE RESPONDENT CLASSIFIED AS OUTSIDE SALESMEN OR SALES ENGINEERS ARE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. IN ARRIVING AT THIS DECISION, THE BOARD NOTES THAT WHILE THE SALESMEN WITH WHOM WE ARE HERE CONCERNED HAVE CERTAIN DISCRETIONARY POWERS WITH RESPECT TO FIXING PRICES OF GOODS SOLD, SUCH POWERS ARE STRICTLY LIMITED BY THE RESPONDENT COMPANY. IF A CUSTOMER REQUESTS A PRICE WHICH IS LESS THAN THE AUTHORIZED MINIMUM WHICH THE SALESMAN CAN OFFER, SUCH PRICE MUST BE APPROVED BY MANAGEMENT. WHILE IT IS QUITE TRUE THAT OVER THE PERIOD OF A YEAR THE DISCOUNT WHICH THE SALESMEN MAY ALLOW CAN AMOUNT TO A SIZEABLE SUM OF MONEY, THIS IN NO WAY DETRACTS FROM THE FACT THAT THE ALLOWABLE DISCOUNT IS PRE-DETERMINED BY THE COMPANY AND LEAVES NO AREA FOR INDEPENDENT ACTION ON THE PART OF THE SALESMAN. BY THIS WE DO NOT WISH TO INFER THAT WE HAVE NOT TAKEN INTO CONSIDERATION THE FACT THAT THE SALESMAN'S DUTY IS TO OBTAIN THE LARGEST PRICE POSSIBLE, HOWEVER, THE LOWEST PRICE WHICH THE SALESMAN CAN ACCEPT IS, IN EACH CASE, PREDETERMINED BY THE COMPANY SINCE THE PERCENTAGE OF DISCOUNT IS BEING SPECIFICALLY LIMITED.

4. THE EVIDENCE OF THE WITNESS CONTAINED IN THE EXAMINER'S REPORT CLEARLY DISCLOSES THAT "IN ALL HIS SALES THERE IS A PREDETERMINED SET OF FIGURES THAT HE FOLLOWS". "...ON NON-COMMERCIAL JOBS HE WOULD TRY TO SELL AT BOOK PRICE. HOWEVER, HE CAN SELL AT 10% LESS THAN BOOK PRICE, AND ON COMMERCIAL JOBS THE DISCOUNT IS APPROXIMATELY 25% ACROSS THE BOARD. IF THERE IS ANY VARIATION TO BE MADE WITH RESPECT TO THE 10% OR THE 25% DISCOUNT, HE WOULD SPEAK TO MANAGEMENT". THE WITNESS FURTHER TESTIFIED THAT "OCCASIONALLY MANAGEMENT TELLS HIM TO LOWER HIS PRICE TO GET SALES".

5. HAVING REGARD TO ALL THE EVIDENCE, THE BOARD FINDS THAT SINCE THE SALESMEN'S DISCRETION IS SPECIFICALLY CONFINED TO THE PREDETERMINED LIMITS SET BY THE RESPONDENT, THE SALESMEN ACCORDINGLY DO NOT HAVE ANY REAL POWER TO MAKE INDEPENDENT DECISIONS WITH RESPECT TO THE SALES PRICE AND THE LIMITED DISCRETIONARY POWER EXERCISED BY THE SALESMEN IS NOT POWER WHICH COULD BE CHARACTERIZED AS MANAGERIAL AUTHORITY WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

6. THE BOARD THEREFORE FINDS THAT ALL OUTSIDE SALESMEN OF THE RESPONDENT AT ST. CATHARINES, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, DRAFTSMEN, OUTSIDE CONSTRUCTION EMPLOYEES AND EMPLOYEES REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

7. FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT D. ENDERSBY, J. FERGUSON, T. LINDAL AND R. F. MEREDITH ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.
8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JANUARY 13TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.
9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER J.E.C. ROBINSON: APRIL 14, 1969.

I DISSENT. ON THE BASIS OF THE REPORT OF THE EXAMINER AS TO THE DUTIES AND THE RESPONSIBILITIES OF PERSONS CLASSIFIED BY THE RESPONDENT AS OUTSIDE SALESMEN, I WOULD HAVE FOUND THAT SUCH PERSONS EXERCISED MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT IS AS FOLLOWS:-

"FOR THE PURPOSES OF THIS ACT, NO PERSON SHALL BE DEEMED TO BE AN EMPLOYEE, WHO, IN THE OPINION OF THE BOARD, EXERCISES MANAGERIAL FUNCTIONS OR IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS."

THERE IS LITTLE DOUBT THAT THE PERSONS IN QUESTION ARE NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS. THE QUESTION IS, THEREFORE, DO THEY EXERCISE MANAGERIAL FUNCTIONS? IT SHOULD BE NOTED FROM THE WORDING OF THE SECTION THAT IT DOES NOT SAY THAT NO PERSON SHALL BE DEEMED AN EMPLOYEE IF HE EXERCISES A PREPONDERANCE OF MANAGERIAL FUNCTIONS; IT SAYS ONLY THAT HE WILL NOT BE DEEMED AN EMPLOYEE IF HE EXERCISES MANAGERIAL FUNCTIONS.

MAY I NOW TURN TO THE REPORT OF THE EXAMINER AND QUOTE THEREFROM CERTAIN EXCERPTS, WHICH, IN MY OPINION, LEAD ME TO THE CONCLUSION THAT THESE PERSONS EXERCISE MANAGERIAL FUNCTIONS.

THE WITNESS DESCRIBES HIS CLASSIFICATION AS "SALES ENGINEER" AND IS PAID A "SALARY PLUS COMMISSION" BY THE COMPANY. IN ADDITION, THE MANAGER OF THE COMPANY ADVISED THAT THESE MEN RECEIVE LIFE INSURANCE COVERAGE WHICH IS MADE AVAILABLE BY THE COMPANY ONLY TO THOSE EMPLOYEES AT OR ABOVE THE SUPERVISORY LEVEL.

PAGE 2, PARAGRAPH 8

"THE WITNESS STATED THAT AS A SALES ENGINEER HIS JOB IS TO PROCURE ORDERS FOR GREENHOUSES THROUGH FIELD WORK AND CORRESPONDENCE IN THE OFFICE. AS A SALES ENGINEER HE MUST RECOMMEND TO CUSTOMERS WHAT WOULD BE SUITABLE FOR THEIR GROWING NEEDS. BY 'GROWING NEEDS' HE MEANS THE GROWING OF A PRELIMINARY CROP. HE SAID THAT ONCE A JOB HAS BEEN PROCURED, HE WOULD FOLLOW IT THROUGH UNTIL IT IS COMPLETED."

PAGE 2, PARAGRAPH 9

HE STATED THAT "ON ALL JOBS HE WOULD DO THE ESTIMATING OR COST, ALSO OCCASIONALLY HE DOES THE PRELIMINARY DRAWINGS WHICH GO TO THE CUSTOMER ALONG WITH THE ESTIMATE."

PAGE 4, PARAGRAPH 19

"ONCE THE NEEDS OF THE CUSTOMER HAVE BEEN DECIDED, WHICH COULD BE DONE IN SEVERAL WAYS, SUCH AS A COMPLETE SET OF DRAWINGS, HE WOULD DO AN ESTIMATE ON THE JOB. HE PREPARES A WRITTEN SPECIFICATION LIST, AS WELL AS AN ESTIMATE ON THE LIST OF ITEMS NEEDED FOR THE JOB. ONCE THESE HAVE BEEN PREPARED, HE THEN PROCEEDS TO PRICE THE LIST."

PAGE 4, PARAGRAPH 20

"----- THESE FIGURES ARE TAKEN FROM HIS PRICE BOOK."

PAGE 9, PARAGRAPH 42

"THE WITNESS SAID THAT ON NON-COMMERCIAL JOBS HE WOULD TRY TO SELL AT BOOK PRICE. HOWEVER, HE CAN SELL AT 10% LESS THAN BOOK PRICE, AND ON COMMERCIAL JOBS THE DISCOUNT IS APPROXIMATELY 25% ACROSS THE BOARD."

IT WAS AGREED BETWEEN THE PARTIES AT THE HEARING THAT THE NEXT EVIDENCE GIVEN BY THE WITNESS WAS AS FOLLOWS:-
"IF THERE IS ANY VARIATION TO BE MADE BEYOND THE 10% DISCOUNT ON NON-COMMERCIAL WORK OR 25% ON COMMERCIAL WORK HE WOULD SPEAK TO MANAGEMENT."

PAGE 8, PARAGRAPH 35

"----- THERE IS NO FIXED LIMIT ON OVER-PRICING."

PAGE 4, PARAGRAPH 21

"THE WITNESS SAID THAT HE COULD MAKE A BID TO THE CUSTOMER BELOW OR ABOVE THE TOTAL COST, AND THIS HE DOES HIMSELF. THE DECISION OF WHETHER OR NOT HE WOULD MAKE A BID BELOW OR ABOVE THE PRICE BOOK COST IS ONE THAT HE HAS TO MAKE AS A SALESMAN, AND IS PART OF HIS SALES TECHNIQUE, TAKING INTO CONSIDERATION COMPETITION AND OTHER POINTS OF SELLING. AFTER MAKING HIS DECISION WHETHER HE WOULD MAKE HIS BID BELOW OR ABOVE, THE WITNESS SUBMITS THE COST TO THE CUSTOMER AND THEN FOLLOWS THIS UP AS A SALESMAN."

PAGE 5, PARAGRAPH 25

"HE AGREED THAT IN LATE 1968, THEY DID A JOB FOR THE CITY OF NIAGARA FALLS PARKS AND CEMETERY, AND THAT THE JOB WAS SOLD FOR ABOUT 10% UNDER BOOK PRICE. HE AGREED THAT THIS WAS THE DEAL HE HAD MADE."

PAGE 6, PARAGRAPH 26

"THE WITNESS SAID THAT THE BAY OF QUINTE SCHOOL JOB IN 1968 WAS SOLD AT BOOK PRICE - - - ."

PAGE 6, PARAGRAPH 27

"THE WITNESS AGREED THAT IN 1968 A JOB FOR THE OSHAWA SCHOOL WAS SOLD AT OVER BOOK PRICE, ABOUT 10% OVER, AND HE WAS THE SALESMAN INVOLVED IN THIS CASE."

PAGE 9, PARAGRAPH 40

"REGARDING THE 25% BELOW COST, THIS IS NOT GIVEN TO MANAGEMENT FOR VERIFICATION BUT IS SUBMITTED DIRECTLY TO THE BUYER HIMSELF."

PAGE 9, PARAGRAPH 40

"MANAGEMENT HAS NEVER VETOED A SALE THAT THE WITNESS HAS MADE TO A GROWER OR A CUSTOMER."

PAGE 8, PARAGRAPH 37

"HE AGREED THAT LAST YEAR HE WAS IMPLICATED IN PROJECTS TOTALLING APPROXIMATELY \$273,000. HOWEVER, ON AN AVERAGE WHERE HE WAS INVOLVED WITH UNDER AND OVER PRICING IT WOULD BE A TOTAL OF ABOUT 90% OF HIS YEARLY BUSINESS."

PAGE 8, PARAGRAPH 35

"HE AGREED THAT LAST YEAR ON HIS DISCRETION HE HAD BOOKED OR COMMITTED THE COMPANY TO SALES WITH A VARIATION OF THE BOOK PRICE FROM 25% BELOW TO 10% ABOVE."

PAGE 7, PARAGRAPH 35

"HOWEVER HE WOULD SAY THAT ROUGHLY ONE-HALF WOULD BE COMMERCIAL AS COMPARED TO NON-COMMERCIAL."

FROM THE FOREGOING, IT MAY EASILY BE SUMMARIZED THE VERY WIDE DISCRETIONARY POWERS WHICH THESE PERSONS INDIVIDUALLY HAVE TO COMMIT THE COMPANY AS FOLLOWS:-

(A) ANNUAL SALES - \$273,000

(B) ANNUAL SALES WHERE VARIATION FROM BOOK PRICE
 $\$273,000 \times 90\% = \$245,700$

(C) DISCOUNT PERMISSIBLE WITHOUT CONSULTING MANAGEMENT
(i) COMMERCIAL SALES

$$\frac{245,700}{2} \times 25\% = \$30,712$$

$$(ii) \frac{245,700}{2} \times 10\% = \$12,285$$

TOTAL \$42,997

(D) OVER PRICE, NO LIMIT BUT ON ACTUAL SALE 10%

$$245,700 \times 10\% = \$24,570$$

(E) ON SALES OF \$273,000 THEREFORE, WITHOUT CONSULTING MANAGEMENT, EACH CAN COMMIT THE COMPANY TO A VARIATION OF:-

DISCOUNT \$42,997

OVER PRICE \$24,570

TOTAL \$67,567

SEE ALSO PAGE 5, PARAGRAPH 23

"THE WITNESS SAID THAT IN SOME CASES, SUCH AS IN ELECTRICAL OR HEATING WORK, WHICH IS NOT DONE BY THE COMPANY, HE DEALS DIRECTLY WITH A SUB CONTRACTOR TO WHOM HE SUPPLIES THE NECESSARY DETAILS OF THE JOB. THE SUB CONTRACTOR THEN GIVES HIM A PRICE THAT THE JOB WOULD COST AND THIS INFORMATION THE WITNESS GIVES TO THE CUSTOMER IN HIS BID. HE AGREED THAT HE WOULD BE COMMITTING COMPANY TO X NUMBER OF DOLLARS WHEN SUBMITTING THE PRICE THAT THE SUB CONTRACTOR WOULD CHARGE FOR ELECTRICAL OR HEATING WORK."

FROM ALL OF THE FOREGOING, IT IS MY OPINION THAT THE PERSONS IN QUESTION EXERCISE SUCH WIDE DISCRETIONARY POWERS THAT THEY SHOULD BE EXCLUDED AS MANAGERIAL PERSONS UNDER THE PROVISIONS OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

15652-68-R: ALCAN UNIVERSAL HOMES EMPLOYEES' ASSOCIATION (APPLICANT)
V. ALCAN UNIVERSAL HOMES DIVISION OF ALCAN DESIGN HOMES LIMITED
(RESPONDENT) V. INTERNATIONAL WOODWORKERS OF AMERICA (INTERVENER #1)
V. UNITED STEELWORKERS OF AMERICA (INTERVENER #2).

BEFORE: O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES
AND H.F. IRWIN.

APPEARANCES AT THE HEARING: M.G. KNEALE, D. RADFORD FOR THE
APPLICANT; C.A. MORLEY, G.M. MARSHALL FOR THE RESPONDENT;
WILFRED CHAMBERS FOR INTERVENER #1; LORNE INGLE, BEN DES
ROCHES, KEN LEVACK FOR INTERVENER #2.

DECISION OF THE BOARD: APRIL 8, 1969.

• • •

2. THE APPLICANT APPEARED BEFORE THE BOARD FOR THE FIRST
TIME IN THE PRESENT APPLICATION AND PURSUANT TO THE REQUIREMENTS
OF THIS BOARD IT WAS REQUIRED TO PROVE ITS STATUS. ORANGEVILLE
ELECTRICAL APPLIANCE WORKERS UNION LOCAL 1614, CANADIAN LABOUR
CONGRESS V. FILTRO ELECTRIC LIMITED 1964 SEPTEMBER OLRB.
MTHLY. REP. 281.

3. IN PROVING ITS STATUS AN APPLICANT MUST FIRST SHOW
THAT IT IS A VIABLE ENTITY. THIS IS USUALLY EVIDENCE BY SOME FORM
OF CONSTITUTION, BY-LAWS, CHARTER OR NUMBER. THE INTERNATIONAL
UNION OF MINE MILL AND SMELTER WORKERS (CANADA) V. PORT COLBORNE
GENERAL HOSPITAL 1955-59 TRANSFER BINDER CCH LLR 12039. CANADIAN
BROTHERHOOD OF WELDERS & BURNERS (INTERNATIONAL) V. J. HARRIS &
SONS LTD. ET AL 60 CLLC 884. SAULT STE. MARIE GENERAL WORKERS
UNION LOCAL 1644 V. WHITEY'S WHITE ROSE 1967 APRIL MTHLY. REP.
OLRB 52. BROCKVILLE CHEMICALS EMPLOYEES ASSOCIATION V. BROCKVILLE
CHEMICALS LIMITED V. INTERNATIONAL CHEMICAL WORKERS UNION (1) V.
UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (1) 1961
JULY MTHLY. REP. OLRB 134. THE CONSTITUTION BY-LAWS OR CHARTER
SHOULD BE ADOPTED.

4. ONCE THE ORGANIZATION COMES INTO EXISTENCE IT MAY THEN
OBTAIN MEMBERS. MEMBERSHIP EVIDENCE WHICH COMES INTO EXISTENCE
PRIOR TO THERE BEING ANY ORGANIZATION IS NOT ACCEPTABLE TO THE
BOARD UNLESS THE ALLEGED MEMBERS PERFORM SOME SUBSEQUENT CONFIRMA-
TORY ACT OR SOME OTHER ACT CONSISTENT WITH MEMBERSHIP OR THE APPLI-
CANT HAS RECTIFIED THE MEMBERSHIP. WHITEY'S WHITE ROSE CASE, SUPRA.
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1915 V. GREAT LAKES
OVERSEAS' PACKING CO. OPERATING AS A DIVISION OF SUMMERHAYES
INDUSTRIAL AND WOOD PRODUCTS LIMITED 1965 MARCH MTHLY. REP. OLRB
640. NORTH BAY GENERAL WORKERS UNION LOCAL 1603 V. COCHRANE-DUNLOP
HARDWARE LIMITED 63 CLLC 1134. WHEN THE EMPLOYEES BECOME MEMBERS
OF THE ORGANIZATION THEY SHOULD RATIFY THE CONSTITUTION.

5. THE ORGANIZATION IN ORDER TO BE CERTIFIED MUST BE A TRADE UNION, FORMED FOR THE PURPOSES THAT INCLUDE REGULATION OR RELATIONS BETWEEN EMPLOYEES AND EMPLOYERS AND CAPABLE OF FUNCTIONING FOR PURPOSES WHICH INCLUDE COLLECTIVE BARGAINING. LABOUR RELATIONS ACT SECTION 1(1)(J). J. HARRIS & SONS LTD. CASE, SUPRA. TRENTON CONSTRUCTION WORKERS ASSOCIATION LOCAL NO. 52 AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA V. TANGE COMPANY LIMITED 62 CLLC 997.

6. SINCE AN ORGANIZATION USUALLY ACTS THROUGH ITS OFFICERS IT SHOULD HAVE OFFICERS ELECTED BY THE MEMBERSHIP IN ACCORDANCE WITH ITS CONSTITUTION. J. HARRIS & SONS LTD. CASE, SUPRA. FERRITRONICS EMPLOYEE ASSOCIATION AND FERRITRONICS LIMITED BOARD FILE NO. 15618-68-R, MARCH 10, 1969. IF IT CHOOSES NOT TO ELECT OFFICERS IT MUST ADOPT AN ACCEPTABLE METHOD OF BEING ABLE TO ACT OR FUNCTION.

7. IT IS CLEAR IN THIS CASE, THAT A NUMBER OF EMPLOYEES OF THE RESPONDENT HELD A MEETING ON JANUARY 18TH, 1969. MINUTES OF THE MEETING WHICH ALSO CONTAINED THE PURPORTED CONSTITUTION WERE FILED WITH THE BOARD. THE MINUTES WERE ON TWO PAGES OF THREE-RING NOTEBOOK, HANDWRITTEN ON BOTH SIDES OF THE FIRST PAGE, AND ON ONE SIDE OF THE SECOND PAGE. THE PIECES OF PAPER CONTAINED THE FOLLOWING PROVISION -

CONSTITUTIONS: THIS ASSOCIATION DOES NOT HAVE A FORMAL CONSTITUTION, BUT THAT THE MEETING AUTHORIZED THE PRESIDENT AND SECRETARY TO FORM A COMMITTEE TO PREPARE A FORMAL CONSTITUTION AND BY-LAWS AND UNANIMOUSLY RECOMMENDED THAT THE ORGANIZATIONAL DETAILS SET OUT IN THE MINUTES OF OUR MEETING WOULD FORM THE CONSTITUTION OF THE ASSOCIATION UNTIL A FORMAL CONSTITUTION IS RECEIVED AND ACCEPTED AT A MEETING DULY CALLED FOR THAT PURPOSE.

FOLLOWING THAT PROVISION THERE WERE RULES (1) REQUIRING A CLOSED SHOP AFTER A 90 DAY PROBATIONARY PERIOD, (2) ALLOWING EMPLOYEES TO JOIN THE ASSOCIATION AND PURCHASE A MEMBERSHIP CARD FOR \$1.00, (3) RESOLVING THAT PAYMENT OF DUES BE \$3.00 PER MONTH BY WAY OF CHECK OFF, AND (4) FURTHER RULES RESPECTING THE MANNER OF BANKING.

8. THESE MINUTES ARE A PROVISIONAL DOCUMENT EFFECTIVE ONLY UNTIL A FORMAL CONSTITUTION IS ADOPTED. WE ARE NOT PREPARED TO SPECULATE AS TO WHAT THE FORMAL DOCUMENT IN THIS CASE MIGHT CONTAIN

NOR ARE WE PREPARED TO SPECULATE THAT THE ORGANIZATION ARISING OUT OF THE FORMAL CONSTITUTION WILL SATISFY THE REQUIREMENTS OF THIS BOARD. IN ADDITION, A CONSTITUTION SHOULD PROVIDE FOR THE CALLING OF MEETINGS AND THE ELECTION OF OFFICERS OR PERSONS TO ACT ON BEHALF OF THE ORGANIZATION. THESE ARE THE NECESSARY RUDIMENTS OF A CONSTITUTION. THERE ARE NO SUCH PROVISIONS IN THE DOCUMENT SUBMITTED. HAVING REGARD TO THE EVIDENCE WE FIND THAT THE DOCUMENTS SUBMITTED WERE NOT A CONSTITUTION AND THEREFORE NO ORGANIZATION WAS CREATED.

9. EVEN ASSUMING THAT AN ORGANIZATION WAS CREATED, IT DID NOT HAVE PROPERLY ELECTED OFFICERS. THERE IS NO ELECTION PROCEDURE DESCRIBED. WHILE OFFICERS APPEAR TO BE ELECTED IN SOME FASHION THEY ARE AUTHORIZED AND RESTRICTED TO PREPARING A FORMAL CONSTITUTION. WE CAN ONLY CONCLUDE THAT THEIR POSITIONS ARE PROVISIONAL AND DEPENDENT ON THE PREPARATION OF A FORMAL CONSTITUTION. WE FURTHER FIND THAT THE ALLEGED OFFICERS WERE ELECTED AT THE MEETING PRIOR TO THERE BEING MEMBERS. WE ARE OF THE OPINION THAT OFFICERS SHOULD AT LEAST BE ELECTED BY THE MEMBERSHIP. J. HARRIS & SONS LTD. CASE AND FERRITRONICS CASE, SUPRA. ACCORDINGLY, WE FIND THAT THE ALLEGED ORGANIZATION IS NOT CAPABLE OF FUNCTIONING FOR THE REQUIRED PURPOSES.

10. THERE IS A FURTHER SUGGESTION THAT THE ORGANIZATION IS CONTINGENT UPON CERTIFICATION. WHILE THE TOTALITY OF THE DOCUMENTS SUGGEST THAT THIS ORGANIZATION, IF IT DID EXIST, MIGHT BE A TRADE UNION, AND WITHOUT MAKING ANY FINDING IN THIS CASE, IT IS OUR OPINION THAT AN ORGANIZATION SHOULD QUALIFY AS A TRADE UNION INDEPENDENT OF CERTIFICATION BY THIS BOARD.

11. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES WE FIND THAT THE APPLICANT HAS NOT SATISFIED THE REQUIREMENTS OF THIS BOARD WITH RESPECT TO ITS STATUS. ACCORDINGLY, THE APPLICATION INSO FAR AS IT RELATES TO THE APPLICANT, IS DISMISSED.

12. THE BOARD FINDS THAT INTERVENER #2 IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

13. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN ITS ALCAN UNIVERSAL HOMES DIVISION AT WOODSTOCK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, NURSE AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

14. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT INDUSTRIAL ENGINEERS AND QUALITY CONTROL PERSONNEL ARE EXCLUDED FROM THE BARGAINING UNIT UNDER THE CLASSIFICATION OF OFFICE STAFF.

15. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF INTERVENER #2 ON FEBRUARY 17TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

16. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

17. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH INTERVENER #2, UNITED STEELWORKERS OF AMERICA.

18. THE MATTER IS REFERRED TO THE REGISTRAR.

15714-68-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION 141 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. REIMER EXPRESS LINES LIMITED (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
P.J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: T.E. ARMSTRONG, R. ELLIOTT FOR THE APPLICANT; D.I. HINDMARSH FOR THE RESPONDENT.

DECISION OF THE BOARD: APRIL 18, 1969.

1. THE RESPONDENT IS A FEDERALLY INCORPORATED COMPANY AND IS ENGAGED SOLELY IN TRANSPORTING INTERPROVINCIAL FREIGHT. THE INSTANT APPLICATION FOR CERTIFICATION IS CONCERNED WITH EMPLOYEES AT THE RESPONDENT'S LONDON TERMINAL.

2. THE LONDON TERMINAL SERVICES LONDON AND THE SURROUNDING AREA IN EASTERN ONTARIO. THE EMPLOYEES WITH WHOM WE ARE CONCERNED ARE TRUCK DRIVERS WHO EFFECT THE LOCAL DELIVERY AND PICK UP OF INTERPROVINCIAL FREIGHT IN THE AREA SERVICED BY THE LONDON TERMINAL. THE EMPLOYEES DO NOT GO OUT OF THE PROVINCE, NOR ARE THEIR TRUCKS LICENSED TO GO OUT OF THE PROVINCE. THERE ARE OTHER TERMINALS IN ONTARIO WHICH OPERATE IN A MANNER SIMILAR TO THE LONDON TERMINAL. THE PERSONS WHO DELIVER FREIGHT INTO THE PROVINCE AND TRANSPORT FREIGHT OUT OF THE PROVINCE ARE INDEPENDENT TRUCKERS AND ARE NOT EMPLOYEES OF THE RESPONDENT. THERE IS A MANAGER AT LONDON, BUT ALL POLICY DECISIONS AND FREIGHT SCHEDULING DECISIONS ARE MADE AT THE COMPANY'S HEAD OFFICE IN WINNIPEG AND THE PAYROLL AND RECORDS ARE HANDLED IN WINNIPEG.

3. THE RESPONDENT OPPOSES THE APPLICATION FOR CERTIFICATION ON THE FOLLOWING GROUNDS:

- A) THAT THERE IS NOT A PROPERLY CONSTITUTED BARGAINING UNIT, AND
- B) THE COMPANY OPERATES EXTRAPROVINCIALY AND THEREFORE COMES UNDER FEDERAL JURISDICTION, RATHER THAN PROVINCIAL.

4. THIS APPLICATION CAN BE DECIDED ON THE SECOND GROUND PUT FORTH BY THE RESPONDENT, AND ACCORDINGLY NO DECISION NEED BE MADE WITH RESPECT TO THE FIRST GROUND.

5. THE QUESTION TO BE DECIDED IS WHETHER THE BUSINESS OF THE RESPONDENT, AND CONSEQUENTLY ITS LABOUR RELATIONS, FALLS WITHIN THE LEGISLATIVE AUTHORITY OF THE DOMINION OR WITHIN THE LEGISLATIVE AUTHORITY OF THE PROVINCE OF ONTARIO.

6. THE APPLICABLE LEGISLATION AND THE RELEVANT PRINCIPLES WHICH ASSIST IN DECIDING THE INSTANT CASE ARE FOUND IN THE STEVEDORE'S CASE REPORTED AS IN THE MATTER OF A REFERENCE AS TO THE VALIDITY OF THE INDUSTRIAL RELATIONS AND DISPUTES INVESTIGATION ACT, AND AS TO ITS APPLICABILITY IN RESPECT OF CERTAIN EMPLOYEES OF THE EASTERN CANADA STEVEDORING COMPANY LIMITED (1955) 3 D.L.R. 721, (1955) S.C.R. 529 AND ISRAEL WINNER V. S.M.T. (EASTERN) LTD. AND A. G. N. B. ET AL., (1951) 4 D.L.R. 529, 68 C.R.T.C. 41, (1951) S.C.R. 887; VARD SUB NOM A.-G. ONT. ET AL V. WINNER, (1954) 4 D.L.R. 657, 71 C.R.T.C. 225, 13 W.W.R. (N.S.) 657, (1954) A.C. 541. THE PRINCIPLES ENUNCIATED IN THOSE CASES WERE APPLIED IN RE TANK TRUCK TRANSPORT LTD. 61 CLLC 184, 1960 OR 497 (1960) 25 D.L.R. (2d) 161 TO A SITUATION INVOLVING INTERPROVINCIAL TRANSPORT.

7. IN THE TANK TRUCK TRANSPORT CASE ONLY 6% OF THE COMPANIES ACTIVITIES WERE CARRIED ON OUTSIDE ONTARIO. THE TEST TO BE APPLIED WAS STATED BY MCLENNAN J. AT P 189 AS FOLLOWS:

".... TO PARAPHRASE LORD PORTER'S WORDS AT P 581, THE ONLY QUESTION APART FROM A CAMOUFLAGED LOCAL UNDERTAKING IS WHETHER THERE IS ONE UNDERTAKING AND AS A PART OF THAT UNDERTAKING DOES THE APPLICANT CARRY GOODS BEYOND THE PROVINCE SO AS TO CONNECT ONTARIO AND QUEBEC OR EXTEND BEYOND THE LIMITS OF ONTARIO INTO THE UNITED STATES:"

MCLENNAN J. FURTHER STATED AT P 190:

"I AGREE WITH COUNSEL FOR THE RESPONDENT THAT NOT EVERY UNDERTAKING CAPABLE OF CONNECTING PROVINCES OR CAPABLE OR EXTENDING BEYOND THE LIMITS OF A PROVINCE DOES SO IN FACT. THE WORDS "CONNECTING" AND "EXTENDING" IN S.92 (10)(A) MUST BE GIVEN SOME SIGNIFICANCE. FOR EXAMPLE A TRUCKING COMPANY OR A TAXICAB COMPANY TAKING GOODS OR PASSENGERS OCCASIONALLY AND AT IRREGULAR INTERVALS FROM ONE PROVINCE TO ANOTHER COULD HARDLY BE SAID TO BE AN UNDERTAKING FALLING WITHIN S.92 (10)(A). AS APPEARS FROM THE WINNER CASE AND THE UNDERWATER GAS DEVELOPERS CASE, "UNDERTAKING" INVOLVES ACTIVITY AND I THINK THAT TO CONNECT OR EXTEND, THAT ACTIVITY MUST BE CONTINUOUS AND REGULAR, BUT IF THE FACTS SHOW THAT A PARTICULAR UNDERTAKING IS CONTINUOUS AND REGULAR, AS THE UNDERTAKING IS IN THIS CASE, THEN IT DOES IN FACT CONNECT OR EXTEND AND FALLS WITHIN THE EXCEPTION IN 10(A) REGARDLESS OF WHETHER IT IS OF GREATER OR LESS IN EXTENT THAN THAT WHICH IS CARRIED ON WITHIN THE PROVINCES. THE THEORY PUT FORWARD BY COUNSEL FOR THE RESPONDENT THAT THAT MAIN AND PRIMARY FUNCTION OF AN UNDERTAKING, DETERMINED BY VOLUME, IS A TEST TO BE APPLIED TO DECIDE WHETHER UNDERTAKINGS FALL WITHIN S92(10)(A) MUST INEVITABLY BE A QUESTION OF PERCENTAGES. THERE IS NO SOUND PRINCIPLE UPON WHICH THE LINE CAN BE DRAWN. SHOULD IT BE 60%, 70% OR 80%? I AM REINFORCED IN MY CONCLUSION THAT THIS IS NOT THE TEST BY THE JUDGMENT OF DUFF J., AS HE THEN WAS, IN THE KING V. EASTERN TERMINAL ELEVATOR COMPANY (1925)

S.C.R. 434 REJECTING AN ARGUMENT THAT
PARLIAMENT HAD JURISDICTION TO ENACT THE
CANADA GRAIN ACT OF 1912 ON THE GROUND
THAT 75% OF THE GRAIN PRODUCED IN CANADA
WAS EXPORTED ABROAD."

8. McLENNAN J. THEN CONCLUDED THAT THE ONTARIO LABOUR
RELATIONS ACT DID NOT APPLY TO THE LABOUR RELATIONS OF THE
APPLICANT COMPANY.

9. THIS BOARD HAS ADOPTED THE TEST IN THE WINNER CASE
AND ITS APPLICATION AS STATED BY McLENNAN J. IN THE FOLLOWING
CASES: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL
No. 880 v. PETTAPIECE CARTAGE LIMITED 1964 DEC. OLRB MTHLY. REP.
436. AMALGAMATED TRANSIT UNION, DIVISION 145 WINDSOR, ONTARIO
v. SKINNER SCHOOL BUS LINES (ST. THOMAS) LIMITED, 1964 DEC. OLRB
MTHLY. REP. 441. CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND
GENERAL WORKERS v. BLACK'S TRANSPORT LIMITED AND LOU'S TRANSPORT
LIMITED, 1965 JAN. OLRB MTHLY. REP. 523. GENERAL TRUCK DRIVERS'
UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA v.
HENDRIE & COMPANY LTD. 1965 MAR. OLRB MTHLY. REP. 646. JOHN
BALZER AND GENERAL TRUCK DRIVERS' UNION LOCAL 879 AND KNIPFEL
CARTAGE COMPANY LIMITED AND THIBODEAU EXPRESS LIMITED BOARD FILE
No. 14927-68-U OCTOBER 28, 1968. WE SEE NO REASON TO DEPART FROM
THE PREVIOUS DECISIONS OF THE BOARD IN THE INSTANT CASE. THERE
IS NO DOUBT THAT THE RESPONDENT CARRIES ON AN INTERPROVINCIAL
UNDERTAKING; I.E. THE UNDERTAKING IS ONE CONNECTING THE PROVINCE
WITH ANOTHER, AND EXTENDING BEYOND THE LIMITS OF THE PROVINCE.
THEREFORE THE RESPONDENT'S BUSINESS FALLS WITHIN THE LEGISLATIVE
AUTHORITY OF THE DOMINION INSO FAR AS ITS LABOUR RELATIONS IS CON-
CERNED.

10. WE FURTHER FIND ANY ATTEMPT TO SEVER THE DEPOT AT
LONDON FROM THE TOTAL UNDERTAKING, WHICH IS IMPLICIT IN THE ARGU-
MENT ADVANCED BY THE APPLICANT, WOULD BE TO EMASCULATE THE UNDERTAKING.
THE UNDERTAKING IS ONE AND INDIVISIBLE, WITH THE LOCAL
DELIVERY SERVICE BEING PART OF THE OVERALL INTERPROVINCIAL OPER-
ATION. IN THIS CONNECTION WE REFER TO THE DECISION IN THE WINNER
CASE WHERE LORD PORTER STATES AT P 581:

"NO DOUBT THE TAKING UP AND SETTING DOWN
OF PASSENGERS JOURNEYING WHOLLY WITHIN THE
PROVINCE COULD BE SEVERED FROM THE REST OF
MR. WINNER'S UNDERTAKING, BUT SO TO TREAT THE
QUESTION IS NOT TO ASK IS THERE AN UNDERTAKING
AND DOES IT FORM A CONNEXION WITH OTHER
COUNTIES OR OTHER PROVINCES, BUT CAN YOU

EMASCULATE THE ACTUAL UNDERTAKING AND YET LEAVE IT THE SAME UNDERTAKING OR SO DIVIDE IT THAT PART OF IT CAN BE REGARDED AS INTERPROVINCIAL AND THE OTHER PART AS PROVINCIAL.

THE UNDERTAKING IN QUESTION IS IN FACT ONE AND INDIVISIBLE. IT IS TRUE THAT IT MIGHT HAVE BEEN CARRIED ON DIFFERENTLY AND MIGHT HAVE BEEN LIMITED TO ACTIVITIES WITHIN OR WITHOUT THE PROVINCE, BUT IT IS NOT, AND THEIR LORDSHIPS DO NOT AGREE THAT THE FACT THAT IT MIGHT BE CARRIED ON OTHERWISE THAN IT IS MAKES IT OR ANY PART OF IT ANY THE LESS AN INTERCONNECTING UNDERTAKING."

SEE ALSO PETTAPIECE CARTAGE LIMITED CASE, SUPRA. THE QUEEN V. BOARD OF TRANSPORT COMMISSIONERS 65 D.L.R. (2d) 425. ACCORDINGLY WE DECLINE TO SEVER THE LONDON TERMINAL FROM THE TOTAL UNDERTAKING.

11. IN THE RESULT, THEREFORE, THE APPLICATION IS DISMISSED.

15731-68-R: AMALGAMATED CLOTHING WORKERS OF AMERICA (APPLICANT) V. PEARL LAUNDRY CO. LIMITED (RESPONDENT).

BEFORE: J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS P.J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: GERALD CHARNEY, TONY DU CHARMS AND JACK MATRAIA FOR THE APPLICANT, A.A. MORSCHER FOR THE RESPONDENT.

DECISION OF J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER
P.J. O'KEEFFE: APRIL 25, 1969.

1. THIS APPLICATION FOR CERTIFICATION WAS MADE ON FEBRUARY 27TH, 1969.

2. THE APPLICANT HAD PREVIOUSLY APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT ON MARCH 26TH, 1968 (BOARD FILE 14362-67-R). AFTER A SERIES OF HEARINGS THE BOARD ON AUGUST 19TH, 1968 DISMISSED THAT APPLICATION ON THE EVIDENCE THAT NO MONEY HAD BEEN COLLECTED WITH RESPECT TO ONE OF THE APPLICANT'S MEMBERSHIP DOCUMENTS WHICH HAD BEEN FILED.

3. THE INSTANT APPLICATION WAS MADE BY THE APPLICANT ON FEBRUARY 27TH, 1969, AND THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT IN THIS CASE WAS NEW MEMBERSHIP EVIDENCE WHICH HAD NOT BEEN BEFORE THE BOARD IN THE EARLIER APPLICATION. THE PERSON WHO ACTED AS COLLECTOR WITH RESPECT TO THE MEMBERSHIP CARDS IN THE INSTANT APPLICATION WAS A DIFFERENT OFFICIAL THAN THE APPLICANT'S OFFICIALS WHO WERE INVOLVED WITH THE "NON-PAY" IN THE EARLIER APPLICATION. THE EARLIEST DATE WHICH APPEARS ON ANY OF THE MEMBERSHIP DOCUMENTS SUBMITTED IN THIS CASE FOR PERSONS WHOSE NAMES APPEAR ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT IS JANUARY 18TH, 1969.

4. NO CHARGES WERE MADE AND NO EVIDENCE ADDUCED WITH RESPECT TO THE VALIDITY OF ANY OF THE MEMBERSHIP DOCUMENTS FILED IN THE INSTANT CASE. THE MEMBERSHIP DOCUMENTS AND THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS (FORM 8) FILED IN THIS CASE ALL APPEAR TO BE IN ORDER.

5. AT THE HEARING IN THIS MATTER, THE RESPONDENT FILED A LETTER WHICH IT BELIEVED WAS RECEIVED BY CERTAIN EMPLOYEES OF THE RESPONDENT. THIS LETTER, ON THE LETTERHEAD OF THE CENTRAL ONTARIO REGIONAL JOINT BOARD OF THE APPLICANT, IS DATED SEPTEMBER 10TH, 1968, AND REFERS TO THE EARLIER APPLICATION MADE BY THE APPLICANT. THE LETTER READS AS FOLLOWS:

DEAR MADAM OR SIR:

IN CONNECTION WITH OUR RECENT ORGANIZING CAMPAIGN AT YOUR PLACE OF EMPLOYMENT, WE ARE INFORMING YOU THAT OUR APPLICATION FOR CERTIFICATION WAS DISALLOWED BY THE ONTARIO LABOUR RELATIONS BOARD.

THE DECISION BY THE BOARD TO BELIEVE THE VERY SHADY EVIDENCE OF THE PETITIONERS WE FIND HARD TO BELIEVE BUT WE HAVE GOT TO NONTHELESS ACCEPT IT. WE ARE SORRY THAT IT DID NOT WORK OUT BUT BY LAW WE CAN TRY AGAIN IN SIX MONTHS' TIME AND WE INTEND TO DO SO.

IN THE ORGANIZING CAMAPIGN YOU ARE AWARE THAT THERE WAS COLLUSION BETWEEN THE PETITIONERS AND THE COMPANY, BUT BECAUSE OF LACK OF KNOWLEDGE THE PETITIONERS HAVE ALSO HURT YOU AND THEMSELVES.

WE HAVE BEEN INFORMED THAT THE COMPANY HAS GRANTED SOME SMALL WAGE INCREASES. THIS IS A SMALL CONSOLATION BUT AT LEAST THE CAMPAIGN MAY HAVE HELPED SOME IN THIS AREA.

PLEASE BEAR WITH US AND BE PATIENT AND REST ASSURED WE WILL TRY AGAIN AND ALSO WE INTEND TO KEEP IN TOUCH WITH YOU VERY FIND PEOPLE.

ENCLOSED YOU WILL FIND YOUR DOLLAR WHICH WE ARE RETURNING TO YOU.

6. THE RESPONDENT ARGUED THAT BECAUSE OF STATEMENTS CONTAINED IN THE LETTER OF SEPTEMBER 10TH, 1968, THIS APPLICATION SHOULD BE DISMISSED OR IN THE ALTERNATIVE, SINCE THE APPLICANT'S FIRST APPLICATION HAD BEEN DISMISSED BECAUSE OF NON-PAY, THERE IS THEREFORE A CLOUD ON THE MEMBERSHIP EVIDENCE IN THE INSTANT CASE AND THE BOARD SHOULD SATISFY ITSELF WITH RESPECT TO SUCH EVIDENCE BY A REPRESENTATION VOTE.

7. IN SUPPORT OF ITS FIRST ARGUMENT, THE RESPONDENT REFERRED THE BOARD TO THE DRAVO OF CANADA LTD. CASE, 58 CLLC ¶18,109, IN WHICH THE BOARD FOUND THAT A REASONABLE LENGTH OF TIME HAD NOT ELAPSED FOLLOWING THE REPAYMENT OF AN INITIATION FEE WHICH HAD PREVIOUSLY BEEN PAID AND THE COLLECTION OF A NEW INITIATION FEE. IN THAT CASE, THE FIRST INITIATION FEE WAS RETURNED AND A NEW INITIATION FEE WAS COLLECTED AT THE SAME MEETING. THE FACTS OF THE INSTANT CASE, HOWEVER, ARE DISTINGUISHABLE FROM THE FACTS OF THE DRAVO Case. IN THE INSTANT CASE, THE INITIATION FEE WAS RETURNED ON SEPTEMBER 10TH, 1968, AND THE COLLECTION OF THE NEW INITIATION FEES DID NOT BEGIN UNTIL JANUARY 18TH, 1969. MORE THAN FOUR MONTHS HAD THEREFORE ELAPSED BETWEEN THE RETURN OF THE FIRST \$1.00 INITIATION FEE AND THE COLLECTION OF THE SECOND INITIATION FEE.

8. THE FURTHER QUESTION WHICH ARISES WITH RESPECT TO THIS MATTER IS WHETHER THE STATEMENT "ENCLOSED YOU WILL FIND YOUR DOLLAR WHICH WE ARE RETURNING TO YOU" WHICH WAS MADE IN THE LETTER OF SEPTEMBER 10TH, 1968, CONSTITUTES EVIDENCE WHICH SHOULD IMPEL THE BOARD TO DRAW AN INESCAPABLE INFERENCE THAT ALL FUTURE INITIATION FEES WILL BE RETURNED IF THE UNION IS UNSUCCESSFUL. THERE WAS NO EVIDENCE THAT THE FIRST INITIATION FEES WERE COLLECTED ON A CONDITIONAL BASIS. SIMILARLY, THERE IS NO EVIDENCE THAT AT THE TIME THE CARDS WERE SIGNED THE EMPLOYEES WERE PROMISED THE RETURN OF THEIR MONEY IF THE INSTANT APPLICATION IS DISMISSED. APPARENTLY, THE UNION GRATUITOUSLY RETURNED THE MONEY ON SEPTEMBER 10TH, 1968, WITHOUT HAVING UNDERTAKEN TO DO SO AND WITHOUT ANY PROMISE WITH RESPECT TO MONIES COLLECTED IN THE FUTURE.

9. HAVING REGARD TO THE FACTS SET OUT ABOVE AND ESPECIALLY THE ELAPSED PERIOD OF TIME BETWEEN THE REPAYMENT OF THE DOLLAR AND THE COMMENCEMENT OF THE APPLICANT'S CURRENT MEMBERSHIP CAMPAIGN, WE MUST FIND THAT THE RESPONDENT HAS FAILED TO SATISFY US THAT THE FACTS OF THIS CASE FALL WITHIN THE PRINCIPLE ENUNCIATED BY THE BOARD IN THE DRAVO CASE. WE FURTHER FIND THAT WHEN CONSIDERATION IS GIVEN TO THE MANNER IN WHICH THE MONEY WAS GRATUITOUSLY RETURNED AND THE TIME THAT HAS ELAPSED SINCE ITS RETURN THAT THERE IS NOT SUFFICIENT EVIDENCE IN THIS CASE TO CAUSE THE BOARD TO FIND THAT THE MONEY COLLECTED WITH RESPECT TO THE MEMBERSHIP EVIDENCE FILED IN THIS CASE WAS PAID BY EMPLOYEES IN A MANNER WHICH COULD BE CONSTRUED AS CONDITIONAL PAYMENT. WE ARE SATISFIED THAT THE MONEY COLLECTED WITH RESPECT TO THE CARDS FILED IN THE INSTANT CASE IS SATISFACTORY EVIDENCE OF A MONETARY SACRIFICE ON THE PART OF THE APPLICANT'S MEMBERS. THE RESPONDENT'S FIRST ARGUMENT MUST ACCORDINGLY FAIL.

10. THE RESPONDENT'S NEXT ARGUMENT WAS THAT A REPRESENTATION VOTE SHOULD BE DIRECTED IN ACCORDANCE WITH THE REASONS SET FORTH IN HYDRO ELECTRIC COMMISSION OF HAMILTON CASE, 58 CLLC ¶18,120. IT WAS THE RESPONDENT'S POSITION THAT IF THE HYDRO ELECTRIC COMMISSION OF HAMILTON CASE IS FOLLOWED, THE DISMISSAL BECAUSE OF "NON-PAY" IN THE FIRST APPLICATION CASTS A CLOUD ON THE MEMBERSHIP EVIDENCE SUBMITTED IN THE INSTANT APPLICATION. WE HAVE STUDIED THE HYDRO ELECTRIC COMMISSION OF HAMILTON CASE WITH A GREAT DEAL OF INTEREST AND PERPLEXITY. IT IS NOTED THAT THE TRADE UNION THAT APPLIED IN THE SECOND APPLICATION WAS A DIFFERENT TRADE UNION THAN THE TRADE UNION THAT HAD BEEN DISMISSED IN THE EARLIER APPLICATION IN THE HYDRO CASE. WE NOTE, HOWEVER, THAT THE BOARD IN THAT CASE "IN VIEW OF THE CIRCUMSTANCES IN WHICH THE REQUEST FOR WITHDRAWAL IN THE EARLIER CASE WAS MADE" FOUND THAT THERE WAS A CLOUD ON THE NEW DOCUMENTARY EVIDENCE OF MEMBERSHIP FILED. THE BOARD, HOWEVER, DID NOT EXPLAIN THE NATURE OF THE CIRCUMSTANCES SURROUNDING THE REQUEST FOR WITHDRAWAL. APPARENTLY, THE CIRCUMSTANCES WERE SUCH THAT THEY CAUSED THE BOARD TO BE IN DOUBT WITH RESPECT TO THE NEW EVIDENCE OF MEMBERSHIP. APART FROM SUCH UNEXPLAINED CIRCUMSTANCES, THERE IS NOTHING SET FORTH IN THAT DECISION WHICH WOULD CAUSE THIS DIVISION OF THE BOARD TO REACH THE CONCLUSION WHICH WAS REACHED IN THE HYDRO CASE.

11. WHILE THE APPLICANT IN THE INSTANT CASE WAS DISMISSED IN AN EARLIER APPLICATION BY REASON OF EVIDENCE OF NON-PAY WITH RESPECT TO ONE MEMBERSHIP CARD, WE DO NOT FIND THAT THE "CIRCUMSTANCES SURROUNDING" THE DISMISSAL WERE SUCH THAT WOULD CAUSE THE BOARD TO BE IN DOUBT WITH RESPECT TO NEW DOCUMENTARY EVIDENCE OF MEMBERSHIP WHICH WAS OBTAINED AFTER THE ELAPSE OF THE PERIOD OF TIME WITH WHICH WE ARE HERE CONCERNED. WE AGREE, HOWEVER, WITH

THE STATEMENT CONTAINED IN THE HYDRO ELECTRIC COMMISSION OF HAMILTON CASE WHICH READS "THE BOARD HAS NEVER LOOKED UPON THE POWER CONFERRED UPON IT BY SECTION 67(2)(H) [NOW SECTION 77(2)(I)] OF THE ACT AS BEING OF A PUNITIVE NATURE, AS WOULD BE THE CASE IF THE BOARD WERE TO ADOPT HERE THE COURSE SUGGESTED BY COUNSEL FOR THE RESPONDENT." THE POWER CONFERRED UPON THE BOARD TO IMPOSE A BAR ON AN UNSUCCESSFUL APPLICANT BY SECTION 77(2)(I) OF THE ACT HAS NEVER BEEN CONSTRUED AS A METHOD OF PUNISHING A TRADE UNION WHICH HAS ATTEMPTED TO COMMIT A FRAUD ON THE BOARD. IF IT WERE OTHERWISE, IT SHOULD BE POINTED OUT THAT NO CORRESPONDING POWER IS GIVEN TO THE BOARD TO IMPOSE PUNISHMENT ON AN EMPLOYER WHO ATTEMPTS TO COMMIT A FRAUD ON THE BOARD.

12. THE PRESENT APPLICANT WAS DISMISSED BECAUSE OF NON-PAY IN THE FIRST APPLICATION AND THE APPLICANT DID NOT MAKE THE INSTANT APPLICATION UNTIL AFTER THE ELAPSE OF A SELF-IMPOSED BAR OF SIX MONTHS. SINCE SIX MONTHS HAVE ELAPSED SINCE THE DISMISSAL OF THE FIRST APPLICATION AND SINCE THE COLLECTOR WHO APPEARS ON THE MEMBERSHIP DOCUMENTS FILED IN THIS CASE WAS NOT THE PERSON INVOLVED IN THE NON-PAY CASE AND IN THE ABSENCE OF ANY DIRECT EVIDENCE WHICH WOULD CAST DOUBT ON THE MEMBERSHIP EVIDENCE FILED, WE MUST ACCORDINGLY FIND THAT THE DECISION IN THE EARLIER APPLICATION DOES NOT IMPAIR THE MEMBERSHIP EVIDENCE FILED IN THIS CASE.

13. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

14. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT WATERLOO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

15. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 6TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

16. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER J.E.C. ROBINSON: APRIL 25, 1969.

I DISSENT. AS MENTIONED BY THE MAJORITY IN THEIR DECISION, THE APPLICANT HAD EARLIER APPLIED TO BE CERTIFIED FOR CERTAIN EMPLOYEES OF THE RESPONDENT COMPANY. IN SUPPORT OF ITS APPLICATION, THE APPLICANT FILED CERTAIN MEMBERSHIP EVIDENCE TOGETHER WITH A FORM 8 AS REQUIRED BY THE BOARD'S RULES OF PROCEDURE.

THE BOARD SUBSEQUENTLY CONDUCTED AN INVESTIGATION INTO THE ALLEGATION THAT AN EMPLOYEE HAD NOT PAID ANY MONEY AS REPRESENTED BY THE COLLECTOR ON THE APPLICATION AND RECEIPT CARD.

THE BOARD HEARD EVIDENCE OF THE EMPLOYEE AND OTHERS TOGETHER WITH THE EVIDENCE OF THE COLLECTOR, A PAID UNION OFFICIAL, AND PREFERRED TO BELIEVE THE EMPLOYEE AND DISBELIEVE THE COLLECTOR. AS A RESULT THE BOARD DISMISSED THAT APPLICATION FOR CERTIFICATION.

SUBSEQUENTLY, LESS THAN ONE MONTH AFTER THE BOARD DISMISSED THAT PREVIOUS APPLICATION BECAUSE OF AN ATTEMPT BY THE APPLICANT TO DECEIVE THE BOARD, THE APPLICANT FORWARDED A LETTER TO CERTAIN OF THE EMPLOYEES OF THE RESPONDENT IN WHICH IT ATTEMPTED TO GIVE AN EXPLANATION AS TO WHY ITS APPLICATION WAS DISMISSED.

IN MY OPINION, THIS LETTER TOO IS COUCHED IN DECEIT. THERE COULD BE NO WAY IN WHICH THERE MIGHT HAVE BEEN A MISUNDERSTANDING AS TO WHY THE ORIGINAL APPLICATION WAS DISMISSED IN AS MUCH AS THE LETTER WAS SIGNED BY THE VERY PERSON WHOM THE BOARD CHOSE TO DISBELIEVE IN HEARING THE NON-PAY ALLEGATIONS. THE LETTER READS AS FOLLOWS:-

DEAR MADAM OR SIR:

IN CONNECTION WITH OUR RECENT ORGANIZING CAMPAIGN AT YOUR PLACE OF EMPLOYMENT, WE ARE INFORMING YOU THAT OUR APPLICATION FOR CERTIFICATION WAS DISALLOWED BY THE ONTARIO LABOUR RELATIONS BOARD.

THE DECISION BY THE BOARD TO BELIEVE THE VERY SHADY EVIDENCE OF THE PETITIONERS WE FIND HARD TO BELIEVE BUT WE HAVE GOT TO NONTHELESS ACCEPT IT. WE ARE SORRY THAT IT DID NOT WORK OUT BUT BY LAW WE CAN TRY AGAIN IN SIX MONTHS' TIME AND WE INTEND TO DO SO.

IN THE ORGANIZING CAMPAIGN YOU ARE AWARE THAT

THERE WAS COLLUSION BETWEEN THE PETITIONERS AND THE COMPANY, BUT BECAUSE OF LACK OF KNOWLEDGE THE PETITIONERS HAVE ALSO HURT YOU AND THEMSELVES.

WE HAVE BEEN INFORMED THAT THE COMPANY HAS GRANTED SOME SMALL WAGE INCREASES. THIS IS A SMALL CONSOLATION BUT AT LEAST THE CAMPAIGN MAY HAVE HELPED SOME IN THIS AREA.

PLEASE BEAR WITH US AND BE PATIENT AND REST ASSURED WE WILL TRY AGAIN AND ALSO WE INTEND TO KEEP IN TOUCH WITH YOU VERY FINE PEOPLE.

ENCLOSED YOU WILL FIND YOUR DOLLAR WHICH WE ARE RETURNING TO YOU.

IN DRAVO OF CANADA LTD. CASE, C.L.S. 76-600, THE BOARD SAID:- "ON A NUMBER OF PREVIOUS OCCASIONS THE BOARD HAS SET OUT ITS VIEWS WITH RESPECT TO THE SIGNIFICANCE IT ATTACHES TO MONEY PAYMENT. THERE IS NO NEED TO REITERATE THESE PRINCIPLES HERE OTHER THAN TO POINT OUT THAT WHERE THE EVIDENCE OF MEMBERSHIP SUBMITTED BY A TRADE UNION CONSISTS OF MEMBERSHIP CARDS AND RECEIPTS, WHAT THE BOARD IS CONCERNED WITH IS A VOLUNTARY MONEY CONTRIBUTION MADE ON HIS OWN BEHALF BY AN APPLICANT FOR MEMBERSHIP IN THE TRADE UNION. IN OTHER WORDS AS WAS SAID IN THE R.C.A. VICTOR COMPANY LTD. CASE, C.L.S. 76-412, THERE MUST BE SOME 'FINANCIAL SACRIFICE' MADE BY THE PERSON SEEKING MEMBERSHIP."

WHILE SOME TIME HAS ELAPSED SINCE THE RETURN OF ALL EARLIER PAYMENTS AND THE COLLECTING OF MONEY FOR THE INSTANT APPLICATION, I HAVE CONSIDERABLE DIFFICULTY IN CONCLUDING THAT THE MEMBERS HAVE IN FACT MADE SOME "FINANCIAL SACRIFICE". I AM ALSO COGNIZANT OF THE FACT THAT NOT ONLY HAS THE APPLICANT EARLIER TRIED TO DECEIVE THE BOARD, BUT IN ITS LETTER IT HAS ALSO ATTEMPTED TO DECEIVE THE EMPLOYEES.

BECAUSE OF THE LAPSE OF TIME, HOWEVER, AND IN ORDER TO OBTAIN THE TRUE WISHES OF THE EMPLOYEES, I WOULD EXERCISE THE DISCRETIONARY POWER GIVEN TO ME BY THE ACT AND ORDER A REPRESENTATION VOTE OF THE EMPLOYEES IN THE BARGAINING UNIT.

I AM REINFORCED IN MY OPINION THAT THE PROPER DISPOSITION OF THIS MATTER WOULD BE THE ORDERING OF A REPRESENTATION VOTE BY THE HYDRO ELECTRIC COMMISSION OF HAMILTON CASE, 58 C.L.L.C. 18,120, WHICH MY COLLEAGUES DISMISS IN THEIR FINDINGS AS BEING INTERESTING AND PERPLEXING. I TOO MUST SAY THAT I FIND CONSIDERABLE PERPLEXITY IN IT IN THAT THE DECISION IN THE PRESENT CASE IS COMPLETELY CONTRARY TO THE PRINCIPLE ENUNCIATED IN THE HYDRO CASE.

THE COMPLETE TEXT OF THE HYDRO ELECTRIC COMMISSION OF HAMILTON CASE IS AS FOLLOWS:

REASONS FOR DECISION

J. FINKELMAN (FOR THE BOARD): APPLICATION FOR CERTIFICATION.

FIRST APPLICATION

ON JANUARY 28, 1958, LOCAL 138 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, FILED AN APPLICATION FOR CERTIFICATION ON BEHALF OF A UNIT OF OFFICE EMPLOYEES OF THE RESPONDENT COMPANY. ON THE OCCASION OF THE HEARING, THE REPRESENTATIVE OF THE UNION GAVE TO THE BOARD ASSURANCE AS TO THE REGULARITY OF PAYMENT OF DUES IN CONNECTION WITH THE APPLICATIONS FOR MEMBERSHIP THAT HAD BEEN FILED IN SUPPORT OF THE APPLICATION. SUBSEQUENTLY, COUNSEL FOR THE RESPONDENT FORWARDED TO THE BOARD INFORMATION THAT TWO OF THE PERSONS CLAIMED AS MEMBERS BY THE APPLICANT UNION HAD "MADE NO PAYMENT TO THE UNION IN ACCORDANCE WITH THE BOARD'S STATEMENT OF POLICY ...". THE BOARD, AFTER CAUSING THE CUSTOMARY CHECK OF CARDS TO BE MADE, INSTRUCTED ONE OF ITS EXAMINERS TO INTERVIEW THE PERSONS WHOSE NAMES HAD BEEN SUBMITTED BY THE RESPONDENT AND ON WHOSE BEHALF APPLICATION CARDS AND RECEIPTS HAD BEEN FILED BY THE APPLICANT. AS THE RESULT OF THE EXAMINER'S INVESTIGATION, THE BOARD DETERMINED THAT A HEARING SHOULD BE CONDUCTED WITH RESPECT TO THE CHARGES MADE BY THE RESPONDENT. AT THIS HEARING, COUNSEL FOR THE APPLICANT UNION GAVE AN ACCOUNT OF CERTAIN CIRCUMSTANCES RELATING TO THE DOCUMENTARY EVIDENCE OF MEMBERSHIP FILED BY THE APPELLANT UNION ON BEHALF OF THE EMPLOYEES TO WHOM REFERENCE HAS BEEN MADE ABOVE AND HE THEN REQUESTED LEAVE TO WITHDRAW THE APPLICATION. THE BOARD, ON MARCH 20, 1958, DENIED THE REQUEST FOR LEAVE TO WITHDRAW AND DISMISSED THE APPLICATION, NOTING THAT IN DOING SO IT WAS FOLLOWING ITS USUAL PRACTICE. HOWEVER, IN VIEW OF CERTAIN REPRESENTATIONS MADE BY COUNSEL FOR THE RESPONDENT, THE BOARD ADDED: "SHOULD THERE BE ANOTHER APPLICATION FOR CERTIFICATION COVERING THE EMPLOYEES AFFECTED BY THIS APPLICATION, THE BOARD WILL, AT THAT TIME, ENTERTAIN ANY REPRESENTATIONS THE PARTIES MAY WISH TO MAKE WITH REGARD TO THE TIMELINESS OF THAT APPLICATION".

SECOND APPLICATION

ON JUNE 28, 1958, A NEW APPLICATION FOR CERTIFICATION AS BARGAINING AGENT ON BEHALF OF THE OFFICE EMPLOYEES OF THE

RESPONDENT WAS FILED BY THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS. AT THE HEARING, THE REPRESENTATIVE OF THE UNION GAVE TO THE BOARD ASSURANCES AS TO THE REGULARITY OF PAYMENT OF DUES IN CONNECTION WITH THE APPLICATIONS FOR MEMBERSHIP THAT HAD BEEN FILED IN SUPPORT OF THE APPLICATION. HE ALSO INFORMED THE BOARD THAT THE APPLICATIONS AND RECEIPTS SUBMITTED BY HIM IN CONNECTION WITH THE INSTANT APPLICATION WERE ALL NEW, I.E., THEY WERE NOT THE DOCUMENTS THAT HAD BEEN FILED IN SUPPORT OF THE EARLIER APPLICATION.

MR. D. L. G. JONES, Q.C., FOR THE RESPONDENT, SUBMITTED THAT THE BOARD OUGHT TO BAR THE PRESENT APPLICATION UNDER SECTION 67(2)(H) OF THE LABOUR RELATIONS ACT IN THAT ONLY SLIGHTLY OVER THREE MONTHS HAD ELAPSED SINCE THE EARLIER APPLICATION HAD BEEN DISMISSED FOLLOWING, AS HE PUT IT, THE DECEIT PRACTICED ON THE BOARD BY THE UNION CONCERNED. MR. M. J. LE BLANC, THE REPRESENTATIVE OF THE UNION, INFORMED THE BOARD THAT THE ORGANIZING CAMPAIGN THAT HAD PRECEDED THE PREVIOUS APPLICATION HAD BEEN CONDUCTED ENTIRELY BY MEMBERS OF LOCAL 138 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, BUT THAT LOCAL 138 HAD HAD NO PART WHATSOEVER IN THE CAMPAIGN LEADING UP TO THE PRESENT APPLICATION. MR. LE BLANC'S STATEMENTS WERE NOT CHALLENGED BY THE RESPONDENT IN ANY WAY.

REPRESENTATION VOTE NECESSARY

THE BOARD HAS NEVER LOOKED UPON THE POWER CONFERRED UPON IT BY SECTION 67(2)(H) OF THE ACT AS BEING OF A PUNITIVE NATURE, AS WOULD BE THE CASE IF THE BOARD WERE TO ADOPT HERE THE COURSE SUGGESTED BY COUNSEL FOR THE RESPONDENT. HOWEVER, THAT CONCLUSION DOES NOT DISPOSE OF THE MATTER. THERE STILL REMAINS THE QUESTION AS TO THE WEIGHT TO BE GIVEN TO THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT UNION. ALTHOUGH THE APPLICANT IN THE INSTANT CASE IS THE INTERNATIONAL ITSELF, WHEREAS THE APPLICANT IN THE EARLIER CASE WAS LOCAL 138 OF THE INTERNATIONAL, AND ALTHOUGH THE EVIDENCE OF MEMBERSHIP SUBMITTED IN THE INSTANT CASE IS FRESH EVIDENCE AND NOT MERELY A REFILING OF THE EVIDENCE SUBMITTED IN THE EARLIER CASE, NEVERTHELESS, IN VIEW OF THE CIRCUMSTANCES IN WHICH THE REQUEST FOR WITHDRAWAL IN THE EARLIER CASE WAS MADE, THERE IS A CLOUD ON THE DOCUMENTARY EVIDENCE IN THIS CASE WHICH CAN ONLY BE REMOVED BY A REPRESENTATION VOTE, ASSUMING OF COURSE THAT THE APPLICANT UNION HAS THE REQUISITE SUPPORT TO THAT END.

IN ALL THE CIRCUMSTANCES OF THIS CASE, THEREFORE, I WOULD HAVE ORDERED A REPRESENTATION VOTE AMONG THE EMPLOYEES IN THE BARGAINING UNIT. EMPLOYEES WOULD BE ASKED WHETHER THEY WISHED TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

15855-68-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) v. SWIFT CANADIAN COMPANY LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: CHARLES BORSK FOR THE APPLICANT, G.A. PHILLIPS FOR THE RESPONDENT, J. ELLIS MELTON FOR THE OBJECTORS.

DECISION OF THE BOARD: APRIL 2, 1969.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE APPLICANT HAS APPLIED FOR ALL EMPLOYEES OF THE RESPONDENT AT 71 FENMAR DRIVE, WESTON, WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT. AT THE HEARING, THE PARTIES AGREED THAT THE RESPONDENT OPERATES A FEED MILL AT THE LOCATION REFERRED TO ABOVE.
2. COUNSEL FOR THE RESPONDENT TOOK THE POSITION THAT THE BOARD IS WITHOUT JURISDICTION INASMUCH AS THE NATURE OF THE EMPLOYER'S OPERATION IS SUCH AS TO BRING IT IN MATTERS RELATING TO LABOUR RELATIONS EXCLUSIVELY WITHIN THE JURISDICTION OF THE PARLIAMENT OF CANADA. COUNSEL FOR THE RESPONDENT REFERRED THE BOARD TO THE SUPERSWEET FORMULA FEEDS, DIVISION OF ROBIN HOOD FLOUR MILLS LIMITED CASE, O.L.R.B. MONTHLY REPORT, JUNE 1965, P. 212.
3. THE FACTS OF THE INSTANT CASE APPEAR TO BE ON ALL FOURS WITH THE CASE REFERRED TO ABOVE AND THE BOARD ACCORDINGLY FINDS THAT THE RESPONDENT'S FEED MILL OPERATION AT 71 FENMAR DRIVE, WESTON, COMES WITHIN THE SCOPE OF THE DECLARATION CONTAINED IN SECTION 45 OF THE CANADIAN WHEAT BOARD ACT R.S.C. 1952 CHAPTER 44. SINCE THIS MILL HAS BEEN DECLARED TO BE A WORK FOR THE GENERAL ADVANTAGE OF CANADA WITHIN THE MEANING OF SECTION 92(10)(c) OF THE BRITISH NORTH AMERICA ACT, THE RESPONDENT'S FEED MILL OPERATION IS ACCORDINGLY WITHIN THE JURISDICTION OF THE PARLIAMENT OF CANADA AND THIS BOARD IS WITHOUT JURISDICTION IN THIS MATTER.
4. THESE PROCEEDINGS ARE ACCORDINGLY TERMINATED.

15856-68-R: THE CANADIAN UNION OF CONSTRUCTION WORKERS (APPLICANT) v. ZACHARY DE VUONO LIMITED (RESPONDENT) v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 506 (INTERVENER).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: J.J. BLAIS AND JOHN MEIORIN FOR THE APPLICANT, F.R. VON VEH AND Z. DE VUONO FOR THE RESPONDENT, R. KOSKIE AND T. NEIL FOR THE INTERVENER.

DECISION OF THE BOARD: APRIL 18, 1969.

1. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT. THE INTERVENER CURRENTLY HOLDS THE BARGAINING RIGHTS FOR THE EMPLOYEES CONCERNED BY VIRTUE OF A COLLECTIVE AGREEMENT DATED SEPTEMBER 26TH, 1967. IN AN EARLIER APPLICATION FOR CERTIFICATION MADE BY THE APPLICANT, BASED ON THE UNCONTENTED EVIDENCE ADDUCED AT THE HEARING, THE BOARD FOUND THAT THE APPLICANT WAS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT (SEE MANOR CARPENTERS CASE, BOARD FILE NO. 15467-68-R). THE INTERVENER ALLEGES, HOWEVER, THAT THE APPLICANT, IN FACT, IS NOT A TRADE UNION WITHIN THE MEANING OF THE ACT.

2. THE PARTICULARS OF THE INTERVENER'S ALLEGATIONS ARE AS FOLLOWS: (1) THE APPLICANT WAS NEVER PROPERLY ORGANIZED. (2) THE APPLICANT'S CONSTITUTION IS NOT VALID, AND IN ANY EVENT, THE SAME WAS NOT PROPERLY ADOPTED, APPROVED AND RATIFIED BY THOSE WHO WERE PURPORTED MEMBERS THEREOF. (3) THE PERSONS WHO PURPORTED TO ADOPT, APPROVE AND RATIFY THE APPLICANT'S CONSTITUTION WERE NOT DULY QUALIFIED MEMBERS OF THE APPLICANT IN ACCORDANCE WITH THE REQUIREMENTS OF THE SAID CONSTITUTION, AND IN PARTICULAR, ARTICLE 4 SECTION 2 THEREOF. (4) THE APPLICANT HAS NOT ELECTED ITS OFFICERS IN ACCORDANCE WITH THE PROVISIONS OF THE SAID CONSTITUTION. (5) NEITHER THE SAID OFFICERS NOR THOSE PERSONS WHO PURPORTED TO ELECT THEM WERE AT ALL MATERIAL TIMES DULY QUALIFIED MEMBERS OF THE APPLICANT. IN ADDITION, THE INTERVENER MADE CERTAIN ALLEGATIONS IMPUGNING THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT. THE APPLICANT DENIES THE ALLEGATIONS OF THE INTERVENER.

3. AT THE HEARING OF THE INSTANT APPLICATION, THE INTERVENER ADDUCED EVIDENCE IN SUPPORT OF ITS ALLEGATIONS AND THE APPLICANT ADDUCED EVIDENCE IN REPLY. THERE WAS FILED WITH THE BOARD THE "MINUTE RECORDS" OF THE APPLICANT. RECORDED ARE THE MINUTES OF TWO MEETINGS, ONE HELD ON TUESDAY, OCTOBER 29TH, 1968 AND THE OTHER ON DECEMBER 3RD, 1968. VIVA VOCE EVIDENCE WAS GIVEN BY VLADIMIRO MASSAROTTO, JOHN MEIORIN AND RAYMOND BURDON. A SUMMARY OF THE EVIDENCE AS TO THE STEPS TAKEN TO FORM THE APPLICANT IS SET OUT BELOW.

4. THE MEETING OF OCTOBER 29TH, 1968, HELD AT THE HOME OF JOHN MEIORIN, WAS ATTENDED BY SIX PERSONS. MEIORIN WAS NAMED AS PRO-TEM CHAIRMAN AND BURDON AS PRO-TEM RECORDING SECRETARY. THE PURPOSE OF THE MEETING WAS TO DISCUSS THE FORMATION OF A CANADIAN

UNION FOR CONSTRUCTION WORKERS. THOSE PRESENT AGREED TO FORM SUCH A UNION AND A CONSTITUTION COMMITTEE WAS SELECTED. THE COMMITTEE WAS INSTRUCTED TO SEEK LEGAL ADVICE AND PROCEED WITH THE DRAFTING OF A CONSTITUTION. ALL SIX PERSONS PRESENT DONATED TWENTY-FIVE DOLLARS EACH TO COVER LEGAL AND OTHER INCIDENTAL EXPENSES.

5. THE SECOND MEETING ON THE EVENING OF DECEMBER 3RD, 1968 WAS HELD IN THE KING EDWARD HOTEL IN TORONTO. THE MEETING WAS ATTENDED BY FIFTEEN PERSONS INCLUDING THE SIX WHO HAD ATTENDED THE EARLIER MEETING. MEIORIN AND BURDON CONTINUED IN THEIR RESPECTIVE ROLES AS PRO-TEM CHAIRMAN AND RECORDING SECRETARY. THOSE PRESENT CONSIDERED THE DRAFT CONSTITUTION PLACED BEFORE THE MEETING AND APPROVED IT ARTICLE BY ARTICLE. THE CONSTITUTION IN ITS ENTIRETY WAS THEREUPON ADOPTED UNANIMOUSLY BY THOSE IN ATTENDANCE. NOMINATIONS THEN WERE MADE FOR THE ELECTION OF THE SIX OFFICERS PROVIDED FOR IN THE CONSTITUTION. ONLY ONE PERSON ACCEPTED THE NOMINATION FOR EACH OFFICE. THE PERSONS IN ATTENDANCE UNANIMOUSLY INDICATED THEIR SUPPORT FOR EACH OF THE NOMINEES BY A SHOW OF HANDS. AMONG THE OFFICERS ELECTED WERE JOHN MEIORIN AS GENERAL PRESIDENT, PATRICK MURPHY AS GENERAL VICE-PRESIDENT, AND RAYMOND BURDON AS GENERAL CORRESPONDING AND RECORDING SECRETARY.

6. MASSAROTTO TESTIFIED THAT HE DID NOT RECALL ANY OF THE NOMINEES FOR OFFICE INDIVIDUALLY TAKING AN OATH AT THE DECEMBER 3RD MEETING. HIS EVIDENCE, HOWEVER, IS THAT MURPHY MAY HAVE READ AN OATH TO THE OTHER NOMINEES. BURDON TESTIFIED THAT THE NOMINEES INDIVIDUALLY HAD TAKEN AN OATH BUT ADMITTED THAT THERE WAS NO MENTION OF THIS IN THE MINUTES OF THE MEETING WHICH HE RECORDED. IN EXAMINATION-IN-CHIEF, MEIORIN TESTIFIED THAT TO HIS RECOLLECTION THE NOMINEES DID TAKE AN OATH. IN CROSS-EXAMINATION, HOWEVER, HIS EVIDENCE WAS THAT MURPHY HAD READ AN OATH AND THAT THE NOMINEES HAD ALL ASSENTED TO IT.

7. THE EVIDENCE OF MASSAROTTO IS THAT ALL THE PERSONS PRESENT AT THE DECEMBER 3RD MEETING SIGNED WHAT AMOUNTED TO AN ATTENDANCE SHEET WHICH WAS FILED AS AN EXHIBIT. MASSAROTTO TESTIFIED THAT NEITHER HE NOR, TO HIS KNOWLEDGE, DID ANYONE ELSE AT THE MEETING SIGN AN APPLICATION FOR MEMBERSHIP IN THE APPLICANT NOR DID ANY OF THEM PAY ANY MONEY. BOTH BURDON'S AND MEIORIN'S EVIDENCE WAS CONFIRMATORY OF THE FACT THAT NO ONE AT THE MEETING SIGNED ANY FORM OF MEMBERSHIP APPLICATION IN THE APPLICANT OR PAID A MEMBERSHIP INITIATION FEE. MEIORIN TESTIFIED THAT THE FORM OF APPLICATION FOR MEMBERSHIP USED BY ANOTHER UNION WAS DISCUSSED. HE COULD NOT RECALL

THE FORM OF APPLICATION FOR MEMBERSHIP PRESENTLY USED BY THE APPLICANT BEING APPROVED AT THE DECEMBER 3RD MEETING. BASED ON MEIORIN'S EVIDENCE, IT DOES NOT APPEAR THAT THE APPLICATION FOR MEMBERSHIP FORM WAS EVER FORMALLY APPROVED BY THE EXECUTIVE OF THE APPLICANT. IN FACT, THE ONLY MEETING OF THE EXECUTIVE SINCE DECEMBER 3RD TOOK PLACE ON APRIL 1ST, 1969, THE DAY PRIOR TO THE BOARD HEARING OF THE INSTANT APPLICATION FOR CERTIFICATION.

8. SECTION 2 OF ARTICLE 4 OF THE CONSTITUTION READS:
"ANY PERSON ELIGIBLE FOR MEMBERSHIP IN THE UNION AND WHO DESIRES TO BECOME A MEMBER AND SUPPORT THE AIMS AND OBJECTIVES OF THE UNION MAY DO SO BY SIGNING AN APPLICATION IN THE FORM PRESCRIBED FROM TIME TO TIME BY THE GENERAL EXECUTIVE BOARD AND TENDERING AN APPLICATION FEE OF NOT LESS THAN ONE DOLLAR." ARTICLE 9 OF THE CONSTITUTION PROVIDES FOR AN ANNUAL CONVENTION. AMONG OTHER PROVISIONS, THE ARTICLE REQUIRES THAT THE DELEGATES TO THE CONVENTION MUST BE MEMBERS OF THE UNION IN GOOD STANDING. ARTICLE 12 OF THE CONSTITUTION PROVIDES FOR THE ELECTION OF OFFICERS. SECTION 1 OF THAT ARTICLE STATES THAT IN ORDER TO BE ELIGIBLE FOR ELECTION OR RE-ELECTION TO ANY OFFICE, CANDIDATES MUST BE ACCREDITED DELEGATES TO THE CONVENTION, EXCEPT THE GENERAL OFFICERS OF THE UNION WHO ARE DEEMED TO BE DELEGATES TO THE CONVENTION. SECTION 3 READS THAT "ELECTION SHALL BE CONDUCTED BY SECRET BALLOT - ONE DELEGATE - ONE VOTE, WITH A SIMPLE MAJORITY." SECTION 6 OF ARTICLE 12 PROVIDES THAT "NOMINEES ALLOWING THEIR NAMES TO GO FORWARD FOR OFFICE SHALL UPON ACCEPTANCE OF THE NOMINATION STEP FORWARD TO THE CONVENTION PLATFORM AND CLEARLY AND AUDIBLY SPEAK THE FOLLOWING LINES TO THE ASSEMBLED DELEGATES." THE "LINES" REFERRED TO ARE AN OATH WHICH IT IS NOT NECESSARY TO QUOTE FOR PURPOSES OF THIS DECISION.

9. THE INITIAL STEPS TAKEN TO BRING THE APPLICANT INTO EXISTENCE WERE DONE IN CONFORMITY WITH REGULAR PROCEDURES. THAT IS TO SAY, A GROUP OF PERSONS INTERESTED IN FORMING A TRADE UNION MET, DISCUSSED THE AIMS OF THE ORGANIZATION, AGREED TO ITS ESTABLISHMENT AND ARRANGED FOR THE PREPARATION OF A CONSTITUTION. A FURTHER MEETING WAS HELD TO WHICH ADDITIONAL POTENTIALLY INTERESTED PERSONS WERE INVITED. AT THAT MEETING THE CONSTITUTION WAS CONSIDERED AND APPROVED BY THOSE PRESENT. THE ORGANIZERS OF THE APPLICANT, HOWEVER, FAILED TO TAKE FURTHER NECESSARY MEASURES TO MAKE THE APPLICANT A VIABLE ENTITY CAPABLE OF ACQUIRING THE STATUS OF A TRADE UNION WITHIN THE MEANING OF THE ACT.

10. MEIORIN AND BURDON TESTIFIED THAT SINCE THOSE PRESENT AT THE DECEMBER 3RD, 1968 MEETING APPROVED THE CONSTITUTION THEY WERE THE "FOUNDERS" OF THE APPLICANT AND THEREFORE MEMBERS OF IT. THIS ASSUMPTION ON THEIR PART WAS UNWARRANTED. IT WAS INCUMBENT UPON THOSE PERSONS AT THE MEETING OF DECEMBER 3RD WHO APPROVED THE CONSTITUTION TO COMPLETE APPLICATIONS FOR MEMBERSHIP AND PAY AN INITIATION FEE IN ORDER TO MEET THE REQUIREMENTS OF THE CONSTITUTION. FURTHER,

IT WOULD HAVE BEEN DESIRABLE, ALTHOUGH NOT ABSOLUTELY NECESSARY, FOR THOSE IN ATTENDANCE TO REAFFIRM THE CONSTITUTION, AFTER BECOMING MEMBERS OF THE APPLICANT. MOREOVER, BOTH TO MEET THE REQUIREMENTS OF THE BOARD AND THE CONSTITUTION IT WAS MANDATORY THAT PERSONS STANDING FOR OFFICE AND THOSE ELECTING THEM BE MEMBERS OF THE APPLICANT. (SEE ABITIBI POWER & PAPER COMPANY, LIMITED CASE, O.L.R.B. MONTHLY OCTOBER 1965, P. 491; SPRING PLASTERING LIMITED CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1968, P. 997; FERRITRONICS LIMITED CASE, (MARCH 10, 1969) BOARD FILE 15618-68-R; ALCAN UNIVERSAL HOMES DIVISION OF ALCAN DESIGN HOMES LIMITED CASE (APRIL 8, 1969) BOARD FILE 15652-68-R).

11. IN VIEW OF THE FACT THAT THERE WAS ONLY ONE NOMINEE FOR EACH EXECUTIVE OFFICE, WE DO NOT FIND THAT THE "OPEN VOTE" BY A SHOW OF HANDS RATHER THAN A "SECRET BALLOT VOTE" AS PRESCRIBED BY THE CONSTITUTION WAS A FATAL PROCEDURAL ERROR. WE ARE OF THE VIEW, HOWEVER, THAT IN ORDER TO CONFORM WITH SECTION 2 OF ARTICLE 4 THE EXECUTIVE OF THE APPLICANT WERE REQUIRED TO GIVE FORMAL APPROVAL TO THE FORM OF APPLICATION FOR MEMBERSHIP BEING USED BY THE APPLICANT, EVEN IF THAT APPROVAL ONLY WAS NOT FORTHCOMING UNTIL SOME TIME AFTER THE DECEMBER 3RD, 1968 MEETING. IT WOULD APPEAR, HOWEVER, THAT NO AUTHORIZATION FOR THE USE OF THE APPLICATION FORM HAS EVER BEEN GIVEN. WHILE THE CONSTITUTION PROVIDES FOR THE TAKING OF A PRESCRIBED OATH BY ALL NOMINEES FOR OFFICE, THE WORDING OF SECTION 6 OF ARTICLE 12 SUGGESTS THAT IT WAS ONLY INTENDED THAT THE OATH BE TAKEN AT AN ANNUAL CONVENTION. THERE IS NEVERTHELESS NO REASON WHY THE OATH SHOULD NOT HAVE BEEN TAKEN BY THE NOMINEES FOR OFFICE AT THE DECEMBER 3RD, 1968 MEETING. IT WOULD SEEM FROM THE EVIDENCE THAT THE OATH, IN FACT, WAS NOT TAKEN BY THE DESIGNATED PERSONS.

12. HAVING REGARD TO ALL THE EVIDENCE RELATING TO THE FORMATION OF THE APPLICANT, BUT IN PARTICULAR THE FAILURE OF THOSE ATTENDING THE ORGANIZATIONAL MEETING ON DECEMBER 3RD, 1968 TO BECOME MEMBERS OF THE APPLICANT, AS WELL AS THE PURPORTED ELECTION OF OFFICERS WHO WERE NOT MEMBERS BY PERSONS WHO ALSO WERE NOT MEMBERS OF THE APPLICANT, THE BOARD FINDS THAT THE APPLICANT IS NOT ENTITLED TO THE STATUS OF A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

13. IN LIGHT OF OUR FINDING CONCERNING THE STATUS OF THE APPLICANT, THE INSTANT APPLICATION CANNOT BE SUCCESSFUL. ACCORDINGLY, IT IS NOT NECESSARY FOR THE BOARD TO PROCEED WITH A HEARING OF THE FURTHER CHARGES OF THE INTERVENER RELATING TO THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT.

14. THE APPLICATION IS THEREFORE DISMISSED.

15862-68-R: THE CANADIAN UNION OF CONSTRUCTION WORKERS (APPLICANT) v. RIA CONSTRUCTION LIMITED (RESPONDENT) v. BRICKLAYERS, MASONS & TILESETTERS UNION, LOCAL 2 ONTARIO (INTERVENER).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: J.J. BLAIS AND JOHN MEIORIN FOR THE APPLICANT, F.R. VON VEH AND Z DE VUONO FOR THE RESPONDENT, R. KOSKIE AND J. ZANUSSI FOR THE INTERVENER.

DECISION OF THE BOARD: APRIL 18, 1969.

1. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT. THE INTERVENER CURRENTLY HOLDS THE BARGAINING RIGHTS FOR THE EMPLOYEES CONCERNED BY VIRTUE OF A COLLECTIVE AGREEMENT DATED NOVEMBER 3RD, 1967. IN AN EARLIER APPLICATION FOR CERTIFICATION MADE BY THE APPLICANT, BASED ON THE UNCONTENTED EVIDENCE ADDUCED AT THE HEARING, THE BOARD FOUND THAT THE APPLICANT WAS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT (SEE MANOR CARPENTERS CASE, BOARD FILE NO. 15467-68-R). THE INTERVENER ALLEGES, HOWEVER, THAT THE APPLICANT, IN FACT, IS NOT A TRADE UNION WITHIN THE MEANING OF THE ACT. THE PARTICULARS OF THE INTERVENER'S ALLEGATIONS ARE IDENTICAL TO THOSE MADE BY THE INTERVENER IN THE ZACHARY DE VUONO LIMITED CASE, BOARD FILE NO. 15856-68-R. THE APPLICANT DENIES THE ALLEGATIONS OF THE INTERVENER.

2. THE PARTIES AGREED AT THE HEARING THAT THE EVIDENCE ADDUCED WITH RESPECT TO THE STATUS OF THE APPLICANT IN THE ZACHARY DE VUONO LIMITED CASE (SUPRA) AND THE REPRESENTATIONS MADE BY COUNSEL FOR ALL PARTIES IN THAT CASE WOULD BE APPLIED TO THE INSTANT APPLICATION FOR CERTIFICATION.

3. FOR THE REASONS GIVEN BY THE BOARD IN ITS DECISION IN THE ZACHARY DE VUONO LIMITED CASE (SUPRA), THE BOARD FINDS THAT THE APPLICANT IS NOT ENTITLED TO THE STATUS OF A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

4. THE APPLICATION IS THEREFORE DISMISSED.

15936-68-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, CLC (APPLICANT) v. WILLIAM NEILSON LIMITED (RESPONDENT) v. MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL UNION NO. 647 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (INTERVENER #1) v. THE EMPLOYEES COUNCIL, WILLIAM NEILSON LIMITED (INTERVENER #2) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS
H.F. IRWIN AND P.J. O'KEEFFE.

APPEARANCES AT THE HEARING: L.A. MACLEAN AND CHARLES BORSK FOR
THE APPLICANT; S.D. BOWMAN, LLOYD GONYOU AND HARLEY NEILSON FOR
THE RESPONDENT; L.A. MACLEAN AND G. HARRISON FOR INTERVENER #1;
ALICK RYDER, R.J. IRVING AND E. McDONALD FOR INTERVENER #2;
WILLIAM DUNNETT FOR THE OBJECTORS.

DECISION OF THE BOARD: APRIL 30, 1969.

1. THIS IS AN APPLICATION FOR CERTIFICATION.
2. IN THE APPLICATION AS FILED, THE APPLICANT SEEKS CERTIFICATION FOR A BARGAINING UNIT OF EMPLOYEES OF THE RESPONDENT DESCRIBED AS FOLLOWS:

"ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO AND MISSISSAUGA, SAVE AND EXCEPT ASSISTANT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN AND FORELADY, DESPATCHER, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT WITH THE INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796."

3. INTERVENER #2, HEREINAFTER CALLED "THE COUNCIL" PRESENTLY HOLDS THE BARGAINING RIGHTS FOR EMPLOYEES OF THE RESPONDENT IN THE FOLLOWING BARGAINING UNIT DESCRIBED IN A COLLECTIVE AGREEMENT BEWEEN IT AND THE RESPONDENT:

"ALL HOURLY PAID EMPLOYEES IN THE ICE CREAM AND ROUTE SALESMEN, AND CONFECTIONERY DIVISIONS OF ITS PLANTS AT GLADSTONE AVENUE, DUPONT STREET, EVANS AVENUE AND RANGEVIEW AVENUE, TORONTO, SAVE AND EXCEPT OFFICE STAFF, SALESMEN, STATIONARY ENGINEERS AND HELPERS, FOREMEN, ASSISTANT FOREMEN, FORELADIES AND PERSONS ABOVE THERANK OF SUPERVISOR."

4. INTERVENER #1, HEREINAFTER CALLED "THE TEAMSTERS", MADE A SEPARATE APPLICATION FOR CERTIFICATION (BOARD FILE NO. 15937-68-R) CONCURRENT WITH THE PRESENT APPLICATION AND HAS INTERVENED IN THIS APPLICATION FOR THAT REASON - BOTH CASES WERE HEARD BY THE BOARD AT THE SAME TIME. IT SEEKS CERTIFICATION AS BARGAINING AGENT FOR A GROUP OF EMPLOYEES OF THE RESPONDENT DESCRIBED AS ALL DRIVERS AND DRIVER SALESMEN OF THE RESPONDENT EMPLOYED IN METROPOLITAN TORONTO AND MISSISSAUGA, SAVE AND EXCEPT DESPATCHER, PERSONS ABOVE THE RANK OF DESPATCHER AND OFFICE STAFF.

5. AT THE HEARING, THE APPLICANT ADVISED THE BOARD THAT IT DESIRED TO AMEND ITS PROPOSED UNIT IN ORDER TO EXCEPT THEREFROM THE UNIT PROPOSED BY INTERVENER #1.

6. THE RESPONDENT AND THE COUNCIL OBJECTED TO THE PROPOSAL OF THE TEAMSTERS, CONCURRED IN BY THE APPLICANT, TO "CARVE OUT" THE UNIT PROPOSED BY THE TEAMSTERS FROM THAT DESCRIBED IN THE COLLECTIVE AGREEMENT BETWEEN THE COUNCIL AND THE RESPONDENT.

7. INTERVENER #1 MADE IT CLEAR AND THE FACTS, OF COURSE, PRECLUDE ANY OTHER SUBMISSION, THAT IT WAS NOT SEEKING RELIEF UNDER SECTION 6(2) OF THE LABOUR RELATIONS ACT, BUT RATHER WAS SEEKING TO CARVE OUT THE PROPOSED UNIT OF DRIVERS ON THE BASIS THAT IT CONSTITUTED AN APPROPRIATE UNIT FOR COLLECTIVE BARGAINING HAVING A COMMUNITY OF INTEREST BASED ON THE COMMON OCCUPATIONS OF ITS CONSTITUENTS WHICH, IT WAS ARGUED, DISTINGUISHED THEM FROM THE OTHER EMPLOYEES CONCERNED.

8. IN OUR OPINION, EVEN IF THE TEAMSTERS IN THE PRESENT INSTANCE QUALIFIED AS A CRAFT UNION WITHIN THE MEANING OF SECTION 6(2) OF THE ACT, THE BOARD WOULD NOT EXERCISE ITS DISCRETION UNDER THAT SECTION TO SEPARATE THE PROPOSED UNIT FROM THE EXISTING ALL EMPLOYEE UNIT, ON THE BASIS OF THE EVIDENCE BEFORE IT IN THIS CASE. IT FOLLOWS, THEREFORE, THAT WHERE, AS HERE, THE UNION CONCERNED HAS STATED THAT IT IS NOT CLAIMING CRAFT STATUS, SUCH A REQUEST MUST BE DENIED.

9. IN ADDITION, THE INCUMBENT COUNCIL HAS A LONG HISTORY OF COLLECTIVE BARGAINING ON BEHALF OF ALL THE EMPLOYEES OF THE RESPONDENT WITH WHOM WE ARE HERE CONCERNED, INCLUDING, OF COURSE, THE TRUCK DRIVERS. IT WAS STATED THAT PERSONS OF THE CATEGORIES NOW SOUGHT BY THE TEAMSTERS HAD TAKEN AN ACTIVE PART IN THE AFFAIRS OF THE COUNCIL AND THERE WAS NO SUGGESTION OF ADVERSE DISCRIMINATION BY THE COUNCIL WITH RESPECT TO THE DRIVERS.

10. ON THE BASIS OF ALL THE EVIDENCE AND WITH DUE REGARD TO THE SUBMISSION OF COUNSEL ACTING ON BEHALF OF THE TEAMSTERS, THE BOARD FINDS THE UNIT PROPOSED BY THE TEAMSTERS TO BE INAPPROPRIATE IN THE CIRCUMSTANCES. THE INTERVENTION IS THEREFORE DISMISSED.

11. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

12. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT AT THE MATERIAL TIMES FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

13. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE FOLLOWING VOTING CONSTITUENCY:

"ALL HOURLY PAID EMPLOYEES IN THE ICE CREAM AND ROUTE SALESMEN, AND CONFECTIONERY DIVISIONS OF ITS PLANTS AT GLADSTONE AVENUE, DUPONT STREET, EVANS AVENUE AND RANGEVIEW AVENUE, TORONTO, SAVE AND EXCEPT OFFICE STAFF, SALESMEN, STATIONARY ENGINEERS AND HELPERS, FOREMEN, ASSISTANT FOREMEN, FORELADIES AND PERSONS ABOVE THE RANK OF SUPERVISOR."

14. ALL EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

15. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT AND INTERVENER #2.

16. THE MATTER IS REFERRED TO THE REGISTRAR.

15937-68-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL UNION, No. 647 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. WILLIAM NEILSON LIMITED (RESPONDENT) v. AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, CLC (INTERVENER #1) v. THE EMPLOYEES COUNCIL, WILLIAM NEILSON LIMITED (INTERVENER #2) GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS H.F. IRWIN AND P.J. O'KEEFFE.

APPEARANCES AT THE HEARING: L. A. MACLEAN AND CHARLES BORSK FOR THE APPLICANT; S.D. BOWMAN, LLOYD GONYOU AND HARLEY NEILSON FOR THE RESPONDENT; L.A. MACLEAN AND G. HARRISON FOR INTERVENER #1; ALICK RYDER, R.J. IRVING AND E. McDONALD FOR INTERVENER #2; WILLIAM DUNNETT FOR THE OBJECTORS.

DECISION OF THE BOARD: APRIL 30, 1969.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

2. FOR THE REASONS SET OUT IN THE BOARD'S DECISION OF EVEN DATE HEREWITH IN BOARD FILE NO. 15936-68-R, (SEE PAGE 76 THIS REPORT) IN WHICH THE SAME PARTIES WERE INVOLVED AND WHICH WAS HEARD AT THE SAME TIME, THIS APPLICATION IS DISMISSED.

16030-69-R; UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
LOCAL 1988 (APPLICANT) v. NORTHERN FLOORING CO. (QUEBEC) LTD
(RESPONDENT).

BEFORE: G.W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R.W. TEAGLE.

DECISION OF THE BOARD: APRIL 29, 1969.

• • •

2. IN THIS APPLICATION THE APPLICANT SEEKS TO BECOME THE BARGAINING AGENT FOR ALL CARPENTERS AND CARPENTERS' APPRENTICES OF THE RESPONDENT IN BOARD AREA No. 13. THE JOB SITE IN QUESTION IS IN SMITH'S FALLS IN THE COUNTY OF LANARK.

3. THE RESPONDENT IS PARTY TO A COLLECTIVE AGREEMENT WITH LOCAL 93 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA. THIS AGREEMENT CONTINUES TO OPERATE UNTIL APRIL 30TH, 1971. BY ARTICLE 1 THE EMPLOYER RECOGNIZES LOCAL UNION 93 AS THE EXCLUSIVE BARGAINING AGENT FOR ALL ITS EMPLOYEES WORKING IN OR OUT OF THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT (EMPHASIS ADDED). THE RESPONDENT CONTENTS THAT THE EMPLOYEES AFFECTED BY THIS APPLICATION ARE COVERED BY THE SAID COLLECTIVE AGREEMENT. THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT INDICATES QUITE CLEARLY THAT THE TWO EMPLOYEES IN QUESTION ARE FROM OTTAWA. LOCAL 93 TAKES THE POSITION THAT THE AGREEMENT ONLY APPLIES OUTSIDE OF THE THREE-COUNTY AREA IF THERE IS NO OTHER CARPENTERS' LOCAL IN THE DISTRICT. THE APPLICANT SUBMITS THAT LOCAL 93 HAS NO JURISDICTION IN SMITH'S FALLS.

4. THERE IS NOTHING IN THE COLLECTIVE AGREEMENT TO SUPPORT THE CONTENTION OF LOCAL 93. WHETHER OR NOT THAT LOCAL HAS JURISDICTION IN SMITH'S FALLS, THE AGREEMENT ON ITS FACE COVERS THE TWO EMPLOYEES AFFECTED BY THIS APPLICATION. THAT BEING THE CASE THE INSTANT APPLICATION IS UNTIMELY.

5. HAVING REGARD TO THE ABOVE CONSIDERATIONS, THE APPLICATION IN OUR OPINION DOES NOT MAKE OUT A PRIMA FACIE CASE FOR THE REQUEST FOR CERTIFICATION AND, PURSUANT TO SECTION 46(1) OF THE BOARD'S RULES OF PROCEDURE, THE APPLICATION IS THEREFORE DISMISSED.

INDEXED ENDORSEMENTS - TERMINATION

14937-68-R: JAMES MOIR (APPLICANT) V. BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 415 (RESPONDENT) V. GORMAN ECKERT AND COMPANY LIMITED (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS H.F. IRWIN AND O. HODGES.

APPEARANCES AT THE HEARING: SAMUEL LERNER, Q.C., JAMES MOIR FOR THE APPLICANT, L.A. MACLEAN, MORRIS ZIMMERMAN FOR THE RESPONDENT, D.F.O. HERSEY FOR THE INTERVENER.

DECISION OF H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER O. HODGES:

APRIL 8, 1969.

1. THE RESPONDENT IS THE BARGAINING AGENT FOR ALL EMPLOYEES OF THE INTERVENER AT LONDON, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE STAFF, CASUAL SUMMER HELP AND EMPLOYEES WITH LESS THAN 30 DAYS SERVICE.

2. THE APPLICANT HAS APPLIED FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT PURSUANT TO THE PROVISIONS OF SECTION 43 OF THE LABOUR RELATIONS ACT.

3. AS ANNOUNCED AT THE HEARING, THERE WERE 48 EMPLOYEES OF THE INTERVENER INCLUDED IN THE BARGAINING UNIT AS OF THE DATE OF THE MAKING OF THIS APPLICATION. THE APPLICANT FILED IN SUPPORT OF HIS APPLICATION DOCUMENTS SIGNED BY A TOTAL OF 27 PERSONS REFERRED TO ABOVE WHERE THEY AUTHORIZE JAMES MOIR TO MAKE APPLICATION TO THE BOARD.

4. THE BOARD MADE ITS USUAL INQUIRY INTO THE ORGINATION, PREPARATION AND CIRCULATION OF THE DOCUMENTS IN SUPPORT OF THE APPLICATION AND ALSO WITH RESPECT TO THE COUNTER PETITION. THE BOARD FURTHER HEARD AND CONSIDERED EVIDENCE IN SUPPORT OF THE APPLICANT'S CHARGES RELATING TO THE COUNTER-PETITION. THE EVIDENCE OF THE APPLICANT IS THAT HE HAS BEEN EMPLOYED BY THE INTERVENER AS A TRUCK DRIVER FOR ABOUT 11 YEARS. HE CAUSED THE PETITION TO BE PREPARED BY HIS LAWYER AND AFTER OBTAINING THEM FROM HIM IN JULY HE CIRCULATED THE DOCUMENT IN THE PLANT AMONG OTHER EMPLOYEES WHILE THEY WERE WORKING OR AT COFFEE BREAK. MOIR WAS ON HOLIDAYS DURING THIS PERIOD AND RETURNED TO THE PLANT ABOUT THREE TIMES DURING THIS PERIOD TO GET THE SIGNATURES. HE WITNESSED 23 SIGNATURES ON THE DOCUMENTS. HE TESTIFIED THAT IN APRIL HE HAD TALKED TO THE EMPLOYEES AT HIS HOME AND BEFORE AND AFTER WORKING HOURS ABOUT AN APPLICATION AND AT THAT TIME PREPARED SOME DOCUMENTS AND OBTAINED SIGNATURES ON THEM. IT WAS AFTER HE HAD DONE THIS THAT HE WENT TO SEE HIS LAWYER. (THESE

DOCUMENTS REFERRED TO BY THE APPLICANT WERE NOT FILED WITH THE BOARD). HE SAID THAT HE HAD HAD NO DISCUSSIONS WITH MANAGEMENT ABOUT THE PETITION NOR WERE THERE ANY SUPERVISORS OR MANAGEMENT PERSONNEL PRESENT WHEN SIGNATURES WERE OBTAINED ON THE DOCUMENTS AND THE OTHER WITNESSES TO THE DOCUMENT ATTENDED AT THE LAWYER'S OFFICE TO RETURN THE DOCUMENTS TO HIM. THEY ALL LOST TIME OFF WORK WITHOUT PAY TO DO THIS. MOIR SAID THAT HE HAD BEEN TOLD BY THE PLANT MANAGER IN JULY NOT TO TALK TO EMPLOYEES DURING WORKING HOURS, AND MOIR SAID HE STOPPED DOING SO. HE SAID THAT HE HAD NOT OBTAINED SIGNATURES OF EMPLOYEES DURING WORKING HOURS BUT HAD SPOKEN TO SOME CONCERNING THE PETITION DURING THAT TIME. TWO EMPLOYEES WHO HAD SIGNED THE EARLIER PETITION WERE BETWEEN THAT TIME AND THE DATE OF THE PRESENT PETITION PROMOTED TO FOREMEN. MRS. GLENNA PELKEY TESTIFIED THAT SHE SIGNED THE PETITION AND WITNESSED ONE OTHER SIGNATURE OUTSIDE THE PLANT DURING LUNCH HOUR. THEN SHE RETURNED IT TO MOIR. SHE REMEMBERED SIGNING ANOTHER EARLIER PETITION. MRS. MARY SHORTRIDGE TESTIFIED THAT SHE SIGNED THE PETITION AND HAD ALSO SIGNED A PREVIOUS DOCUMENT BUT COULD NOT REMEMBER WHEN. SHE ATTENDED THE LAWYER'S OFFICE HAVING ASKED HER FORELADY PERMISSION TO BE ABSENT BUT GAVE HER NO REASON. JIM MOIR DROVE HER IN HIS CAR TO THE OFFICE. MOIR WAS NOT WORKING THAT DAY BUT SHE SAW HIM IN THE SHIPPING ROOM THAT DAY ABOUT 12:05. THOMAS MATHENSIK SAID HE SIGNED THE PETITION OUTSIDE THE PLANT DURING LUNCH HOUR AND WITNESSED ONE OTHER SIGNATURE AT THE SAME PLACE. HE ALSO ATTENDED THE LAWYER'S OFFICE HAVING REQUESTED PERMISSION FROM HIS FOREMAN TO BE ABSENT TO ATTEND TO LEGAL MATTERS WITHOUT PAY.

5. MOIR ALSO TESTIFIED THAT THERE HAD BEEN A PETITION EARLIER TO THE ONE FILED IN THIS APPLICATION. HE SAID THAT HE HAD PREPARED AND CIRCULATED THE PETITION AND OBTAINED ALL THE SIGNATURES ON IT IN APRIL AND MAY ON THE STREET OR AT HIS HOME BOTH BEFORE AND AFTER WORKING HOURS. HE HAD THEREAFTER TAKEN THESE DOCUMENTS TO HIS LAWYER WHOM HE HAD KNOWN PERSONALLY PRIOR TO THAT TIME AND WHO PREPARED THE PRESENT DOCUMENTS FILED WITH THE BOARD. WHILE THE PETITION IN THIS APPLICATION CAN BE RELATED TO THE PREVIOUS DOCUMENT THIS SITUATION IS NOT ON ALL FOURLS WITH THE DECISION OF THE BOARD IN THE WEYERHAEUSER CANADA LIMITED CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY 1964 p. 559 WHERE THERE WAS NO EVIDENCE WHATSOEVER ADDUCED WITH RESPECT TO THE ORIGINATIION OF FORMER PETITIONS OR THE CIRCUMSTANCES LEADING UP TO THE EMPLOYEES' ATTENDANCE AT A LAWYER'S OFFICE. IN THE CIRCUMSTANCES SURROUNDING THE PETITION IN THIS MATTER WE DO NOT FIND THAT IT IS DEFECTIVE FOR THE ABOVE REASON AS SUGGESTED BY COUNSEL FOR THE RESPONDENT. ON THE EVIDENCE WE FIND THAT THE PETITION MEETS THE TESTS OF THE BOARD IN ITS DETERMINATION OF WHETHER IT EXPRESSES THE VOLUNTARY WISHES OF THE SIGNATURES TO IT.

6. THERE WAS, HOWEVER, ALSO FILED WITH THE BOARD A PETITION IN OPPOSITION TO THE APPLICATION SIGNED BY TWENTY-THREE PERSONS, TWENTY-TWO OF WHOM APPEARED ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT AND FIVE OF THOSE HAD ALSO SIGNED THE PETITION IN SUPPORT OF THE APPLICATION. IF THE BOARD GAVE WEIGHT TO THIS PETITION THEN FOLLOWING THE BOARD'S POLICY IN THIS TYPE OF SITUATION WE WOULD GIVE EFFECT TO THE FIVE REVOCATIONS AS REDUCING THE NUMBER OF THE SIGNATURES ON THE PETITION IN SUPPORT OF THE APPLICATION SO THAT IN THIS CASE THE APPLICANT WOULD NOT HAVE MORE THAN 50 PER CENT OF THE EMPLOYEES WHO HAD SIGNIFIED IN WRITING THAT THEY NO LONGER WISHED TO BE REPRESENTED BY THE RESPONDENT. WE FIND NO REASON FOR DEPARTING FROM THE BOARD'S POLICY EXPRESSED ABOVE FOR THE PURPOSES OF THIS CASE AND REFER TO THE PRINTING SPECIALTIES & PAPER PRODUCTS CASE, O.L.R.B., MONTHLY REPORT, JULY 1967 p. 363. THE BOARD THEREFORE MADE ITS USUAL INQUIRY OF THE PETITION FILED IN OPPOSITION TO THIS APPLICATION AND ALSO HEARD THE EVIDENCE IN SUPPORT OF THE APPLICANT'S CHARGES AGAINST THIS PETITION.

7. MORRIS ZIMMERMAN, INTERNATIONAL REPRESENTATIVE OF THE UNION, TESTIFIED THAT HE CAUSED THEIR LEGAL COUNSEL TO DRAW UP THE PETITION WHICH HE PRESENTED AT A MEETING HELD BY THE LOCAL UNION MEMBERS AT THE HOLIDAY INN IN LONDON ON AUGUST 11TH. HE EXPLAINED THE PETITION TO THEM AND ASKED THEM TO SIGN IT AND HE WITNESSED TWELVE OF THE SIGNATURES APPEARING ON IT. THEN HE GAVE THE DOCUMENTS AT THE END OF THAT MEETING TO MRS. ROSS AND MRS. ARNOLD, TWO OF THE EMPLOYEES PRESENT. THE DOCUMENTS WERE RETURNED TO HIM THE FOLLOWING TUESDAY EVENING AT ONE OF THE EMPLOYEE'S HOMES AND HE TOOK THE DOCUMENTS TO THEIR LEGAL COUNSEL. HE SAID THAT A NOTICE WAS POSTED ON THE COMPANY'S BULLETIN BOARD TO THE ATTENTION OF ALL EMPLOYEES WITH RESPECT TO THE SUNDAY MEETING AND THIRTEEN ATTENDED BUT ONLY TWELVE SIGNED THE PETITION AT THAT TIME WHOSE SIGNATURES HE IDENTIFIED. AFTER THE MEETING HE GAVE THE DOCUMENT TO MRS. AUDREY ROSS AND MRS. HANNAH ARNOLD AND ASKED THEM TO GET FURTHER SIGNATURES. ON THE TUESDAY FOLLOWING HE ATTENDED AT MRS. ARNOLD'S HOME TO PICK UP THE DOCUMENTS AND RETURNED THEM TO THE SOLICITOR THE NEXT DAY.

8. WITH RESPECT TO THIS DOCUMENT, MRS. ROSS, AN EMPLOYEE OF THE RESPONDENT OF SOME THIRTEEN YEARS SENIORITY, SAID THAT MR. ZIMMERMAN CONTACTED HER AT HOME ABOUT THE MEETING AND SHE POSTED THE NOTICE AFTER ASKING PERMISSION TO DO SO FROM MR. PETRIE. ALL MEMBERS OF LOCAL 415 WERE ASKED TO ATTEND. SHE FIRST SAW THE DOCUMENT AT THE MEETING AND SIGNED IT THERE. SHE THEN TOOK ONE SHEET OF THE DOCUMENT TO THE PLANT ON MONDAY AND DURING NOON HOUR ON THAT DAY AND THE NEXT SHE OBTAINED EIGHT MORE SIGNATURES ON IT. SHE RETURNED IT TO MR. ZIMMERMAN AT MRS. ARNOLD'S HOUSE ON TUESDAY EVENING AND IT HAD NOT BEEN OUT OF HER POSSESSION SINCE THAT TIME.

MRS. ARNOLD AN EMPLOYEE OF THE RESPONDENT WITH SOME TWENTY YEARS SENIORITY, ATTENDED THE MEETING AT THE HOLIDAY INN, OBTAINED THE DOCUMENT FROM MR. ZIMMERMAN AT THE END OF THAT MEETING AFTER SIGNING IT HERSELF AND TOOK IT TO WORK THE FOLLOWING DAY. SHE OBTAINED THREE SIGNATURES ON THE DOCUMENT, ONE BEFORE WORK, ONE AT LUNCH TIME AND ONE AT AN EMPLOYEE'S HOUSE AFTER WORK. THEN SHE GAVE BOTH DOCUMENTS TO MR. ZIMMERMAN AT HER HOUSE ON TUESDAY EVENING. (ALTHOUGH THERE APPEARED TO BE SOME CONFUSION AS TO WHAT SHEETS EACH OF THE ABOVE WITNESSES HAD WITH THEM, IT APPEARS ON ALL THEIR EVIDENCE THAT EACH HAD ONE SHEET ON WHICH CERTAIN SIGNATURES WERE OBTAINED). MRS. ARNOLD SAID SHE HAD THE SHEET ON WHICH THE SIGNATURES NUMBERED ONE TO FIFTEEN APPEARED AND DID NOT HAVE THE OTHER SHEET IN HER POSSESSION, WHICH WAS ONLY GIVEN TO HER BY MRS. ROSS ON TUESDAY.

9. ON THE BASIS OF THE ABOVE EVIDENCE WE WOULD BE PREPARED TO GIVE WEIGHT TO THE PETITION FILED IN OPPOSITION TO THIS APPLICATION. WE FIND NOTHING IMPROPER AS ALLEGED, THAT THE UNION PREPARED THE DOCUMENT AND WAS THE MOVING FORCE IN HAVING IT TAKEN UP AND PRESENTED TO THE BOARD. IT MUST BE CONSIDERED THAT IN THE CASE BEFORE US THE UNION IS THE BARGAINING AGENT FOR ALL THE EMPLOYEES OF THE RESPONDENT (WITH CERTAIN EXCEPTIONS NOT RELEVANT TO THIS ISSUE) AND AS THEIR REPRESENTATIVE SURELY IS ENTITLED THROUGH ITS MEMBERS AND SUPPORTERS TO OPPOSE THE APPLICATION IF THEY SO DESIRE. THIS, IN OUR OPINION, IS NOT AT ALL CONTRARY TO THE PURPOSE AND INTENT OF SECTION 43 OF THE ACT WHICH DIRECTS THE BOARD THAT IT MUST, IN ORDER TO GRANT THE RELIEF REQUESTED, FIND THAT "NOT LESS THAN 50 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING...". THE WISHES OF THE EMPLOYEES AS A WHOLE MUST BE CONSIDERED WHICH PRINCIPLE DOES NOT PRECLUDE THE FILING OF A PETITION OPPOSING THE APPLICATION WHICH IS GIVEN SIMILAR ATTENTION BY THE BOARD AS THE PETITION FILED IN SUPPORT OF THE APPLICATION. IF, HOWEVER, THE APPLICANT SATISFIED THE PROVISIONS OF THE SECTION THEN OF COURSE THE RESULT IS THAT A REPRESENTATION VOTE IS ORDERED. THE BARE FACT THAT A UNION IS THE SPONSOR OF A PETITION IN THIS CIRCUMSTANCE CANNOT BE TERMED COERCIVE SO THAT IT CANNOT REPRESENT THE TRUE WISHES OF THOSE PERSONS WHO SIGN THE DOCUMENT. THE UNION, THROUGH THE CERTIFICATION PROCEDURE OR OTHERWISE, BECOMES THE REPRESENTATIVE OF THE EMPLOYEES AND PRESUMABLY ACTS IN THEIR INTEREST. IT IS NOT AT ALL AKIN TO THE SAME RELATIONSHIP OF EMPLOYER/EMPLOYEE IN WHICH THERE IS CONSIDERABLE CONTROL OF AN EMPLOYEE'S ACTIONS IN WHICH AN EMPLOYEE IS VULNERABLE, WHICH THE BOARD HAS RECOGNIZED IN APPLICATIONS BEFORE IT. THE FACT, THEREFORE, IN THIS CASE THAT THE COUNTER-PETITION WAS SPONSORED BY THE BARGAINING AGENT, WE FIND, DOES NOT DETRACT FROM THE WEIGHT THAT CAN BE ACCORDED TO IT.

10. THE BOARD THEN CONSIDERED THE EVIDENCE OF THE APPLICANT IN SUPPORT OF ITS CHARGES RELATING TO THE COUNTER-PETITION AND THE EVIDENCE OF THE RESPONDENT IN REPLY. SIMPLY PUT, THE APPLICANT SUBMITTED THAT TWO PERSONS WHO SIGNED THE PETITION IN SUPPORT OF THE APPLICATION AS WELL AS THE COUNTER-PETITION DID NOT KNOW WHAT THEY SIGNED FOR THE RESPONDENT AND WHEN THEY REQUESTED REMOVAL OF THEIR NAMES FROM THE COUNTER PETITION, WERE SUMMARILY REFUSED. THE APPLICANT SUBMITS THAT THEIR NAMES SHOULD BE RETAINED ON THE APPLICANT'S PETITION AND THEIR REVOCATIONS NOT GIVEN ANY EFFECT IN THE CIRCUMSTANCES IN WHICH THEIR SIGNATURES WERE OBTAINED. THE APPLICANT CHARGES THAT THE RESPONDENT USED COERCIVE METHODS, EITHER DIRECTLY OR INDIRECTLY, IN OBTAINING SIGNATURES ON THAT PETITION. THE EVIDENCE OF MRS. MARY BAKER, AN EMPLOYEE OF THE RESPONDENT IN ITS SPICE DEPARTMENT AND INCLUDED IN THE BARGAINING UNIT, SIGNED THE PETITION IN SUPPORT OF THE APPLICATION. SHE ALSO ATTENDED THE UNION MEETING AT THE HOLIDAY INN REFERRED TO ABOVE AT WHICH MR. ZIMMERMAN WAS PRESENT. SHE TESTIFIED THAT ZIMMERMAN TOLD THE FOURTEEN LADIES AT THE MEETING THAT HE WANTED THEM TO SIGN THE PAPERS TO HELP KEEP THE UNION IN AND BEFORE ASKING THEM TO SIGN FURTHER SAID "YOU OLDER PEOPLE WON'T DO VERY WELL AS THE JOB WON'T BE SECURED IF YOU GET A COMMITTEE OF YOUR OWN IN", AND THAT "WE'D HAVE NO BACKING." MRS. BAKER SAID, IN HER OPINION, IT APPEARED TO HER THAT HE WAS FRIGHTENING THE OLDER PEOPLE. SHE DID NOT SIGN THE UNION'S PAPERS WHICH WERE PLACED ON A TABLE FOR THEM TO SIGN. SHE SAID ALSO THAT NO ONE QUESTIONED THE FACT THAT SHE DID NOT SIGN. ALL OF THOSE PRESENT WERE TALKING ABOUT THE UNION AND WERE SURPRISED TO SEE HER THERE AS SHE WAS NOT A MEMBER. MR. ZIMMERMAN READ THE DOCUMENTS TO HER AND THE OTHERS AND SHE TOLD HIM WHAT SHE THOUGHT ABOUT THE UNION. SHE ADMITTED THAT SHE WAS NOT PERSUADED BY WHAT ZIMMERMAN HAD TOLD THE MEETING AND DID NOT THINK THERE WAS ANYTHING WRONG WITH IT.

11. DAVID HOFFMAN, A MACHINE OPERATOR IN THE MILL ROOM ON THE SECOND FLOOR FOR ABOUT FIVE MONTHS AND INCLUDED IN THE BARGAINING UNIT, TESTIFIED THAT HE SIGNED THE APPLICANT'S PETITION IN JIM MOIR'S CAR AFTER WORKING HOURS. HE WAS THEREAFTER APPROACHED BY AUDRY ROSS TO SIGN ANOTHER DOCUMENT ON THE SECOND FLOOR AT FIVE MINUTES TO ONE WHEN HE WAS PREPARING TO RETURN TO WORK. HE SAID HE DID NOT HAVE ANY DISCUSSIONS WITH HER, SHE JUST ASKED HIM TO SIGN THE PAPER AND HE TOLD HER THAT HE HAD ALREADY SIGNED FOR MOIR TO GET THE UNION OUT TO WHICH MRS. ROSS REPLIED, IT DOESN'T MATTER AND IT WOULD HELP HER OUT IF HE SIGNED HER PAPER. THERE WERE THEN SOME OTHER NAMES ON IT BUT HE DID NOT SEE ANY TYPING OR PRINTING ON IT. HE SIGNED IT ON A FLAT SURFACE ON A MACHINE WHERE HE WORKED. AFTER HE SIGNED THIS DOCUMENT, HE TALKED TO MOIR ABOUT THE PETITION WHO EXPLAINED IT TO HIM AND THEN WENT BACK TO SEE MRS. ROSS IN THE OLIVE DEPARTMENT AND ASKED HER TO TAKE HIS NAME OFF HER PAPER AND SAID THAT SHE AGREED TO DO THIS AND HE NEVER SPOKE TO HER AFTER THAT. HE MAINTAINED THAT HE DID NOT KNOW WHAT HE WAS SIGNING FOR AUDREY ROSS BUT SAID UNDER

CROSS-EXAMINATION THAT HE KNEW IT HAD SOMETHING TO DO WITH THE UNION. HE ALSO SAID HE HAD TALKED TO GEORGE BOYCE, A SUPERVISOR, ABOUT MRS. ROSS' PETITION WHO ALSO EXPLAINED IT TO HIM. HE SAID HE SIGNED THE PAPER BECAUSE IT WOULD HELP HER OUT AND KNEW SOMEONE WOULD BE AROUND WITH A PAPER TO KEEP THE UNION IN. HE HAD HEARD THAT MRS. ROSS WAS A UNION MEMBER BUT DID NOT KNOW SHE WAS ITS SECRETARY.

12. GLENN MCQUEEN, EMPLOYED BY THE RESPONDENT FOR ABOUT ELEVEN MONTHS, DISCUSSED AN APPLICATION WITH MOIR IN MARCH OR APRIL AND WANTED TO GET THE UNION OUT. HE ALSO SIGNED THIS PETITION AND AS WELL THE COUNTER-PETITION. HE SAID HE DID NOT KNOW WHAT IT WAS THAT AUDREY ROSS GAVE TO HIM TO SIGN. HE WAS BUSY AT THE TIME, WHICH WAS ABOUT TEN MINUTES TO TWELVE, AND SAID HE JUST SIGNED IT TO GET RID OF HER. HE SAID, UNDER CROSS-EXAMINATION, THAT THE PAPER WAS ON A FLAT SURFACE WITH THE FULL PAGE OPEN IN PLAIN VIEW BUT HE DID NOT READ THE HEADING NOR DID MRS. ROSS READ IT TO HIM. MRS. ROSS WORKED IN THAT DEPARTMENT AND HE KNEW THAT SHE WAS THE RECORDING SECRETARY FOR THE UNION AND MRS. ARNOLD WAS A UNION STEWARD, AND THAT WHEN HE SIGNED THE OTHER DOCUMENT IN MARCH OR APRIL HE KNEW THE PEOPLE WHO WERE FOR THE UNION AND THAT MRS. ROSS WAS ONE. HE FURTHER STATED THAT MRS. ROSS TOLD HIM SHE HAD SOMETHING FOR HIM TO SIGN AND HE SIGNED IT TO GET RID OF HER AND DID NOT CARE WHAT IT WAS WHETHER FOR OR AGAINST THE UNION. MCQUEEN SAID HE REALIZED THAT HE SHOULD NOT HAVE SIGNED MRS. ROSS' DOCUMENT AFTER HE HAD SPOKEN TO MOIR WHO SUGGESTED TO HIM THAT HE DID NOT KNOW WHAT HE HAD SIGNED AND PERSUADED HIM THAT HE SHOULD NOT HAVE SIGNED THE DOCUMENT.

13. MRS. AUDREY ROSS TESTIFIED WITH RESPECT TO THE ALLEGATIONS OF THE APPLICANT THAT ON AUGUST 12TH SHE ASKED DAVID HOFFMAN TO SIGN A PETITION OUTSIDE THE MEN'S DRESSING ROOM IN THE SPICE MILL DEPARTMENT AT FIVE MINUTES TO ONE. MISS DOROTHY SMITH WAS WITH HER AT THE TIME AND SHE CALLED HOFFMAN FROM THE DRESSING ROOM AND SAID THAT "AUDREY WOULD LIKE TO TALK WITH YOU." MRS. ROSS SAID THAT SHE TOLD HIM SHE HAD A DOCUMENT CONCERNING THE UNION AND SHE READ THE HEADING ON THE DOCUMENT TO HIM AND HE ASKED HER IF THIS WAS TO KEEP THE UNION IN OR TO GET IT OUT OF THE PLANT, TO WHICH MRS. ROSS REPLIED, TO KEEP IT IN. HOFFMAN THEN SIGNED IT AT A STAND AND MRS. ROSS COMMENTED THAT "WE HAVE A CONTRACT NOT A LOT OF FALSE PROMISES". LATER THAT AFTERNOON HE ASKED HER IF SHE WAS THE PERSON FOR WHOM HE HAD SIGNED THE PAPER AND ASKED THAT HIS NAME BE TAKEN OFF. MRS. ROSS SAID SHE WAS BUSY AT THAT TIME AND REPLIED "I WILL SEE WHAT I CAN DO." THE NEXT MORNING AT WORK MRS. ROSS TOLD HOFFMAN THAT SHE HAD NO RIGHT TO TAKE HIS NAME OFF THE DOCUMENT AS IT WAS A "LAWYER'S DOCUMENT" TO WHICH HE REPLIED "IT DOESN'T MATTER ANYWAY."

14. MRS. ROSS SAID SHE ASKED GLENN MCQUEEN TO SIGN THE DOCUMENT AT THE BEGINNING OF THE LUNCH HOUR AT THE SINK WHEN HE WAS WASHING AND MRS. ARNOLD AND MRS. MOKAN WERE WITH HER AT THE TIME.

SHE TOLD HIM THAT SHE HAD A PAPER SHE WOULD LIKE HIM TO READ AND ASKED HIM TO READ THE HEADING WHICH HE DID. HE SAID HE HAD SIGNED A PAPER FOR MOIR BUT THAT HE WOULD SIGN THIS ONE WHICH HE DID. AFTER LUNCH HE TOLD MRS. ROSS, "I DID A FOOLISH THING BY SIGNING THAT PAPER FOR JIM, BUT NOW THAT I SIGNED YOURS FOR THE UNION I FEEL MUCH BETTER." ON THE FOLLOWING FRIDAY MRS. ROSS OBSERVED JIM MOIR, GLENN MCQUEEN AND GREG. SUNDERLAND IN THEIR FOREMAN'S OFFICE AND JIM MOIR HAD A BLUE PAPER IN HIS HAND. ON HER WAY TO THE CAFETERIA, AT BREAK THAT AFTERNOON, MCQUEEN WHO APPEARED VERY UPSET, SAID TO THE EFFECT THAT HE HAD DONE A VERY FOOLISH THING BY SIGNING BOTH PAPERS AND THAT JIM MOIR KNEW HE HAD SIGNED HERS AND HE WAS CONCERNED ABOUT ATTENDING IN TORONTO AT A HEARING REGARDING THE PETITION.

15. MRS. ROSS IS A MEMBER OF THE UNION AND HAS OFFICIAL POSITIONS IN THE LOCAL. SHE FIRST HEARD OF A PETITION AGAINST THE UNION IN JANUARY BUT WAS NOT THEN AWARE THAT MCQUEEN WAS ASSISTING MOIR. SHE THEN FOUND OUT ABOUT THE PRESENT PETITION IN JULY AND ON HER RETURN FROM HER HOLIDAYS WAS CONTACTED BY MR. ZIMMERMAN. SHE DENIED TELLING HOFFMAN THAT IF HE SIGNED THE DOCUMENT IT WOULD HELP HER OUT, BUT ADMITTED THAT WHEN HOFFMAN ASKED TO TAKE HIS NAME OFF IT SHE DID NOT INTEND TO DO ANYTHING ABOUT IT.

16. MRS. HANNAH ARNOLD SAID THAT SHE WAS PRESENT WHEN MRS. ROSS SPOKE TO MCQUEEN ON AUGUST 12TH AT NOON BY THE SINK IN THE OLIVE ROOM. SHE TESTIFIED THAT MRS. ROSS TOLD HIM WHAT HE WAS SIGNING AND WHAT IT MEANT AND ASKED IF HE UNDERSTOOD IT TO WHICH HE REPLIED, "YES". HE READ IT, SIGNED IT AND SAID "I'M GLAD I SIGNED IT BECAUSE I WANT THE UNION TO STAY IN." MRS. ARNOLD AND MRS. MOKAN WHO WERE ALSO PRESENT THEN LEFT. MRS. ARNOLD ALSO SAID THAT SHE ATTENDED THE UNION MEETING ON AUGUST 11TH AT THE HOLIDAY INN AND THERE WAS NOTHING SAID AT THAT MEETING TO FRIGHTEN ANYONE, BUT RATHER THE CONTRACT WAS DISCUSSED AS WELL AS THEIR JOB SECURITY UNDER IT. THERE WAS A DISCUSSION AS TO THEIR SENIORITY IF THE UNION WAS NOT THERE.

17. THERE IS CONSIDERABLE CONFLICT IN THE TESTIMONY OF THE APPLICANT'S WITNESSES AND THOSE OF THE RESPONDENT AND WITHOUT DETAILING EACH AREA OF SUCH CONFLICT IT IS SUFFICIENT FOR THE PURPOSE OF THIS DECISION TO GENERALLY STATE THAT WE WERE FAVOURABLY IMPRESSED WITH THE MANNER IN WHICH THE EVIDENCE WAS GIVEN BY MRS. ROSS AND MRS. ARNOLD WHO TO US APPEARED TO GIVE A STRAIGHTFORWARD, PROBABLE ACCOUNT OF THE EVENTS SURROUNDING THEIR RELATIONSHIP WITH HOFFMAN AND MCQUEEN REGARDING THE

PETITION. WE CANNOT, ON THE EVIDENCE, ACCEPT HOFFMAN'S SUBMISSION THAT HE DID NOT KNOW WHAT HE WAS SIGNING FOR MRS. ROSS AS HE STATED QUITE CLEARLY THAT HE KNEW IT HAD SOMETHING TO DO WITH THE UNION AND KNEW MRS. ROSS HAD SOMETHING TO DO WITH THE UNION AND HE KNEW WHAT HE HAD SIGNED FOR MOIR. IT IS OBVIOUS THAT IT WAS ONLY AFTER TALKING TO MOIR THAT DAY THAT HE WAS PERSUADED TO ATTEMPT TO GET HIS NAME REMOVED FROM THAT PETITION. NEITHER DO WE ACCEPT THE TESTIMONY OF MCQUEEN THAT HE DID NOT KNOW WHAT THE PETITION WAS WHEN HE SIGNED IT. THE TESTIMONY OF BOTH MRS. ROSS AND MRS. ARNOLD WHO WAS PRESENT WITH MRS. ROSS AT THE TIME, AND WHICH WE ACCEPT, ESTABLISHES THAT THE HEADING WAS READ TO MCQUEEN, AND WHEN ASKED IF HE KNEW WHAT IT WAS HE ANSWERED IN THE AFFIRMATIVE. MCQUEEN ADMITTED HE KNEW THAT MRS. ROSS WAS IN THE UNION AND IN A WAY THOUGHT THAT THE DOCUMENT MIGHT HAVE SOMETHING TO DO WITH THE UNION. IN ANY EVENT HE SAID HE DID NOT CARE WHAT HE SIGNED WHETHER FOR OR AGAINST THE UNION WHICH HE HAD LATER SPOKEN TO MOIR. IT WAS MOIR THAT SUGGESTED THAT HE DID NOT KNOW WHAT HE HAD SIGNED AND INFLUENCED HIM THAT HE SHOULD NOT HAVE SIGNED IT. IF IN FACT THESE TWO PERSONS WISHED TO REVOKE THEIR REVOCATIONS IT COULD HAVE BEEN ACCOMPLISHED IN WRITING TO THE BOARD PRIOR TO THE TERMINAL DATE OF THIS APPLICATION. THEY CHOSE NOT TO DO THIS BUT RELY NOW ON AN ARGUMENT BASED ON THE PRINCIPLE OF NON EST FACTUM. WE DO NOT ACCEPT THIS ARGUMENT AND FIND ON ALL THE EVIDENCE BEFORE US THAT THEIR SIGNATURES WERE VOLUNTARILY AFFIXED TO THE COUNTER PETITION AND WE ATTRIBUTE NO IMPROPRIETY TO EITHER MRS. ROSS OR MRS. ARNOLD IN THIS MATTER.

18. AS TO THE ALLEGATION THAT THE UNION USED COERCIVE METHODS TO OBTAIN SIGNATURES ON THE PETITION, THE ONLY EVIDENCE IS THAT OF MRS. BAKER WHO ATTENDED THE UNION MEETING AT THE HOLIDAY INN. THIS WAS CHIEFLY A MEETING FOR UNION MEMBERS AND IT IS ONLY NATURAL THAT THEY WOULD DISCUSS THE BENEFITS OF THEIR RELATIONSHIP AND THE POSSIBLE RAMIFICATIONS WITHOUT UNION REPRESENTATION. MRS. BAKER IN HER OWN WORDS ADMITTED "I WASN'T PERSUADED BY THAT TALK", AND SHE WAS THE ONLY PERSON THERE WHO WAS NOT A MEMBER OF THE UNION. NO ONE QUESTIONED HER ABOUT NOT SIGNING THAT PETITION, AND ALTHOUGH HER OPINION WAS THAT CERTAIN REMARKS MADE BY MR. ZIMMERMAN WERE FRIGHTENING THE OLDER PEOPLE, THOSE PEOPLE IT MUST BE REMEMBERED WERE ALREADY UNION MEMBERS AND THIS WAS A UNION MEETING. THE STATEMENTS ATTRIBUTED TO MR. ZIMMERMAN IN OUR VIEW ARE QUITE INNOCUOUS IN THESE CIRCUMSTANCES AND WOULD NOT HAVE THE COERCIVE EFFECT THAT THE APPLICANT SUGGESTS. WE ARE NOT PREPARED THEREFORE TO GIVE ANY WEIGHT TO THIS CHARGE BY THE APPLICANT.

19. WE ARE SATISFIED THEREFORE THAT THE PETITION IN OPPOSITION TO THIS APPLICATION EXPRESSES THE VOLUNTARY DESIRES OF THOSE PERSONS WHO EXECUTED THE DOCUMENTS SO THAT WE ARE PREPARED TO GIVE FULL WEIGHT TO IT. ON THIS BASIS, AND FOR THE FOREGOING REASONS, THE REVOCATIONS OF THE SIGNATURES APPEARING ON THE APPLICANT'S PETITION ARE EFFECTIVE

TO REDUCE THE NUMBER OF EMPLOYEES WHO HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY A TRADE UNION TO LESS THAN THE 50 PER CENT REQUIREMENT SET OUT IN SECTION 43(3) OF THE ACT.

20. ACCORDINGLY, THE APPLICATION IS DISMISSED.

DISSENT OF BOARD MEMBER H.F. IRWIN: APRIL 8, 1969.

1. I DISSENT.

2. THIS IS AN APPLICATION MADE UNDER SECTION 43(2) OF THE LABOUR RELATIONS ACT FOR A DECLARATION BY THE BOARD THAT THE RESPONDENT TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT AS DEFINED IN THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER DATED NOVEMBER 29TH, 1966 AND TO OPERATE UNTIL OCTOBER 1ST, 1968. THE APPLICANT, JAMES MOIR, IS AN EMPLOYEE OF THE INTERVENER AND IS INCLUDED IN THE SAID BARGAINING UNIT. THE APPLICATION WAS FILED WITH THE BOARD ON AUGUST 6TH, 1968 AND IS TIMELY UNDER THE APPLICABLE PROVISIONS OF THE ACT. THE REGISTRAR ADVISED THE PARTIES THAT HE HAD FIXED AUGUST 14TH, 1968 AS THE TERMINAL DATE FOR THIS APPLICATION.

3. A COPY OF THE APPLICATION, TOGETHER WITH A PHOTOSTATIC COPY OF THE PREAMBLE APPEARING ON THE DOCUMENT ATTACHED TO IT, BUT NOT THE EMPLOYEES' SIGNATURES THEREON, WAS DELIVERED BY HAND ON AUGUST 7TH, 1968 TO THE RESPONDENT AND INTERVENER.

4. I CONCUR IN THAT PART OF THE MAJORITY DECISION THAT FINDS THE EVIDENCE SUBMITTED BY THE APPLICANT IN SUPPORT OF THE APPLICATION MEETS THE TESTS OF THE BOARD AND EXPRESSES THE VOLUNTARY WISHES OF THE 27 EMPLOYEES IN THE BARGAINING UNIT WHO SIGNED IT THAT THEY NO LONGER WISH THE RESPONDENT UNION TO REPRESENT THEM. AS THERE WERE 48 EMPLOYEES IN THE BARGAINING UNIT ON THE DATE OF THE APPLICATION, THESE SIGNATURES IN WRITING REPRESENT 56.25 PER CENT THEREOF.

5. THE TWO DOCUMENTS CONTAINING 23 SIGNATURES (OR 47.9 PER CENT) OF EMPLOYEES OF THE INTERVENER IN THE BARGAINING UNIT, AND FILED IN OPPOSITION TO THE APPLICATION, WERE MAILED TO THE BOARD BY REGISTERED MAIL ON AUGUST 14TH BY THE SOLICITORS FOR THE RESPONDENT UNION, ALONG WITH THE REPLY OF THE RESPONDENT UNION, AND WERE RECEIVED BY THE BOARD ON AUGUST 15TH, 1968. IN ACCORDANCE WITH THE PROVISIONS OF SECTION 50(1)(B) OF THE BOARD'S RULES OF PROCEDURE AND REGULATIONS MADE UNDER THE LABOUR RELATIONS ACT, SUCH DOCUMENTS ARE DEEMED TO HAVE BEEN FILED WITH THE BOARD ON THE DATE THEY WERE SO MAILED, AUGUST 14TH, 1968, WHICH IS THE TERMINAL DATE.

6. THE TWO DOCUMENTS SIGNED BY THE 23 OBJECTING EMPLOYEES IN OPPOSITION TO THE APPLICATION WERE ORIGINATED BY THE INTERNATIONAL REPRESENTATIVE OF THE RESPONDENT UNION, MORRIS ZIMMERMAN. THEY WERE PREPARED ON HIS INSTRUCTIONS BY THE UNION'S SOLICITORS. THEY WERE PRESENTED TO THE EMPLOYEES OF THE INTERVENER AT A SPECIAL UNION MEETING CALLED BY THE RESPONDENT AT THE HOLIDAY INN, LONDON, ON SUNDAY EVENING, AUGUST 11TH, 1968.

7. ACCORDING TO THE EVIDENCE ADDUCED AT THE HEARINGS IN THIS MATTER, ZIMMERMAN CHAIRED THE MEETING AND EXPLAINED THE PURPOSE OF THE DOCUMENTS TO THE 13 EMPLOYEES PRESENT, OF WHICH 12 WERE UNION MEMBERS. HE INFORMED THEM INTER ALIA THAT THE JOBS OF THE OLDER EMPLOYEES WOULD BE IN JEOPARDY AS THEY WOULD BE THE FIRST TO BE LAID OFF IF THEY DID NOT RETAIN THE UNION AS THEIR BARGAINING AGENT TO PROTECT THEIR INTERESTS. THERE IS NOTHING ELSE THAT ZIMMERMAN COULD HAVE SAID THAT WOULD STRIKE GREATER FEAR IN THE MINDS OF THE OLDER EMPLOYEES THAN TO SUGGEST TO THEM THE POSSIBLE LOSS OF THEIR LIVELIHOOD. THIS FRIGHTENING ASSERTION WAS AN INVENTION OF ZIMMERMAN'S IMAGINATION BECAUSE THERE IS NOT EVEN A SUGGESTION IN ALL THE EVIDENCE ADDUCED THAT THE INTERVENER EMPLOYER HAD ANY SUCH ACTION IN MIND OR HAD EVEN THOUGHT OF SUCH ACTION. ZIMMERMAN WAS MAKING AN ALL-OUT ATTEMPT TO INSPIRE THOSE PRESENT TO SIGN THE PETITION IN OPPOSITION TO THE APPLICATION AND TO GET THEM TO STRIVE WITH ALL THEIR MIGHT TO PERSUADE OTHER EMPLOYEES TO DO LIKEWISE. MOREOVER, THE TWO PRIME MOVERS IN CANVASSING THE OTHER EMPLOYEES ON MONDAY AND TUESDAY AT THE PLANT TO SIGN THE DOCUMENTS IN OPPOSITION TO THE APPLICATION WERE MRS. AUDREY ROSS, WITH 13 YEARS' SENIORITY, AND MRS. HANNAH ARNOLD, WITH 20 YEARS' SENIORITY. THEY WERE AMONG THE OLDER EMPLOYEES AT WHOM ZIMMERMAN'S STATEMENTS WERE SPECIFICALLY AIMED. THEY CANVASSED EMPLOYEES AT THE PLANT ON MONDAY AND TUESDAY AND ZIMMERMAN PICKED UP THE DOCUMENTS AT MRS. ARNOLD'S HOUSE ON TUESDAY EVENING AND TURNED THEM OVER TO THE UNION'S SOLICITOR, WHO FILED THEM WITH THE BOARD, ALONG WITH THE RESPONDENT UNION'S REPLY IN FORM 16. THE EMPLOYEES THEMSELVES HAD NO PART WHATSOEVER IN THE ORIGIN-ATION AND PREPARATION OF THESE DOCUMENTS. THEY ACTED SOLELY ON THE ADVICE AND URGING OF MORRIS ZIMMERMAN.

8. IN THE ABOVE CIRCUMSTANCES, I WOULD GIVE NO WEIGHT TO THE PETITION FILED IN OPPOSITION TO THE APPLICATION. IN VIEW OF THE BOARD'S FINDING THAT THE EVIDENCE FILED BY THE APPLICANT EXPRESSES THE VOLUNTARY SIGNIFICATIONS IN WRITING OF NOT LESS THAN 50 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT TRADE UNION, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 43(3) OF THE ACT, I WOULD HAVE DIRECTED A REPRESENTATION VOTE. THE EMPLOYEES WOULD BE ASKED IF THEY WISHED TO BARGAIN COLLECTIVELY THROUGH THE RESPON-DENT UNION.

9. WHEN, AS IN THE INSTANT CASE, THE BOARD GIVES WEIGHT TO THE PETITION SIGNED BY EMPLOYEES IN OPPOSITION TO THE APPLICATION FOR TERMINATION OF BARGAINING RIGHTS, THE ESTABLISHED PRACTICE OF THE BOARD HAS BEEN TO CANCEL OUT SIGNATURES OF THOSE EMPLOYEES WHICH APPEAR ON BOTH PETITIONS. IF THIS PROCEDURE REDUCES THE NUMBER OF SIGNATURES ON THE PETITION FILED BY THE APPLICANT TO LESS THAN 50 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT AS OF THE DATE THE APPLICATION WAS MADE, THE APPLICATION IS DISMISSED. THIS IS BOARD POLICY AND I AM BOUND BY IT.

10. THIS PRACTICE, HOWEVER, HAS CAUSED ME MUCH CONCERN FOR A LONG PERIOD OF TIME. I HAVE VERY SERIOUS DOUBT THAT IT IS IN HARMONY WITH THE PURPOSE AND INTENT OF THE PROVISIONS OF SECTION 43 OF THE LABOUR RELATIONS ACT. THIS SECTION SETS OUT THE TIME AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS BY EMPLOYEES MAY BE MADE, THE EVIDENCE REQUIRED IN SUPPORT OF THE APPLICATION AND THE PROCEDURE TO BE FOLLOWED BY THE BOARD IF SUCH AN APPLICATION IS MADE. SECTION 43(3) READS AS FOLLOWS:

(3) UPON AN APPLICATION UNDER SUBSECTION 1 OR 2, THE BOARD SHALL ASCERTAIN THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE AND WHETHER NOT LESS THAN 50 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING AT SUCH TIME AS IS DETERMINED UNDER CLAUSE (J) OF SUBSECTION 2 OF SECTION 77 THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE TRADE UNION, AND, IF NOT LESS THAN 50 PER CENT HAVE SO SIGNIFIED, THE BOARD SHALL, BY A REPRESENTATION VOTE, SATISFY ITSELF THAT A MAJORITY OF THE EMPLOYEES DESIRE THAT THE RIGHT OF THE TRADE UNION TO BARGAIN ON THEIR BEHALF BE TERMINATED.

11. IN THE INSTANT CASE, THE BOARD HAS MADE A FINDING THAT NOT LESS THAN FIFTY PER CENT OF THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE, AUGUST 6TH, 1968, HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT TRADE UNION. THE SIGNIFICATIONS IN WRITING OF 27 OF THE 48 EMPLOYEES IN THE BARGAINING UNIT, OR 56.25 PER CENT, WERE FILED WITH THE APPLICATION. THIS APPEARS TO HAVE MET THE REQUIREMENTS OF THE SECTION AND, IF SO, IT IS MANDATORY ON THE BOARD TO CONDUCT A REPRESENTATION VOTE.

WHAT TAKES PLACE AFTER THESE REQUIREMENTS ARE MET BY THE APPLICANT WOULD APPEAR TO BE COMPLETELY IRRELEVANT. ANY CHANGE IN THE MINDS OF THE EMPLOYEES IN RESPECT OF THEIR SUPPORT OF THE APPLICATION WILL BE RESOLVED THROUGH A VOTE BY SECRET BALLOT. TO FOLLOW THE PRESENT PROCEDURE OF THE BOARD MEANS THAT IF THERE WERE 1000 EMPLOYEES IN THE BARGAINING UNIT ON THE DATE AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS WAS MADE, AND THE APPLICANT SUBMITS 500 VOLUNTARY SIGNIFICATIONS IN WRITING WHICH MEETS THE ESTABLISHED TESTS OF THE BOARD, THEN AN EMPLOYEE OR GROUP OF EMPLOYEES IN THE BARGAINING UNIT OPPOSING THE APPLICATION NEED TO OBTAIN A VOLUNTARY SIGNIFICATION IN WRITING FROM ONLY ONE OF THE 500 EMPLOYEES WHO SIGNED THE APPLICANT'S PETITION THAT HE NOW FAVOURS THE RETENTION OF THE UNION AS BARGAINING AGENT AND, AS THIS WOULD REDUCE THE SIGNATURES ON THE APPLICANT'S PETITION FROM 500 TO 499 OR 49.9 PER CENT, THE BOARD WOULD DISMISS THE APPLICATION BECAUSE THE SIGNIFICATIONS ARE LESS THAN THE REQUIRED 50 PER CENT. THE EMPLOYEES SEEKING TERMINATION OF AN INCUMBENT UNION'S BARGAINING RIGHTS UNDER THE PROVISIONS OF SECTION 43 OF THE ACT HAVE NO MEANS OF RELIEF EXCEPT THROUGH THE MEDIUM OF A REPRESENTATION VOTE. I CANNOT ENVISAGE THAT IT WAS THE INTENTION OF THE LEGISLATURE THAT THE PROVISIONS OF SECTION 43(3) OF THE ACT SHOULD BE GIVEN SUCH NARROW AND NEGATIVE CONSTRUCTION AND INTERPRETATION THAT IT ACTUALLY RETARDS AND SUPPRESSES THE GRANTING OF THE RELIEF INTENDED.

12. SECTION 10 OF THE INTERPRETATION ACT, R.S.O. c. 191 STATES THAT,

"EVERY ACT SHALL BE DEEMED TO BE REMEDIAL, WHETHER ITS IMMEDIATE PURPORT IS TO DIRECT THE DOING OF ANYTHING THAT THE LEGISLATURE DEEMS TO BE FOR THE PUBLIC GOOD OR TO PREVENT OR PUNISH THE DOING OF ANYTHING THAT IT DEEMS TO BE CONTRARY TO THE PUBLIC GOOD, AND SHALL ACCORDINGLY RECEIVE SUCH FAIR, LARGE AND LIBERAL CONSTRUCTION AND INTERPRETATION AS WILL BEST ENSURE THE ATTAINMENT OF THE OBJECT OF THE ACT ACCORDING TO ITS TRUE INTENT, MEANING AND SPIRIT.

13. IT IS THE DUTY AND RESPONSIBILITY OF THIS BOARD, THEREFORE, TO GIVE THE PROVISIONS OF SECTION 43 OF THE ACT SUCH FAIR, LARGE AND LIBERAL CONSTRUCTION AND INTERPRETATION AS WILL BEST ENSURE AFFORDING THE EMPLOYEES AN OPPORTUNITY OF EXPRESSING THEIR WISHES THROUGH A REPRESENTATION VOTE BY SECRET BALLOT. WHEN, AS IN THE INSTANT CASE, THE APPLICANT HAS MET THE PRESCRIBED STATUTORY CONDITIONS OF FILING VOLUNTARY SIGNIFICATIONS IN WRITING SIGNED BY

NOT LESS THAN 50 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT AS OF THE DATE THE APPLICATION WAS MADE, IN MY RESPECTFUL OPINION IT IS MANDATORY ON THE BOARD TO ORDER A REPRESENTATION VOTE. THE TERMINAL DATE MERELY FIXES THE TIME AS DETERMINED UNDER CLAUSE J OF SUBSECTION 2 OF SECTION 77, AFTER WHICH THE BOARD WILL NOT ACCEPT ADDITIONAL VOLUNTARY SIGNIFICATIONS IN WRITING THAT THE EMPLOYEES NO LONGER WISH TO BE REPRESENTED BY THE TRADE UNION. THESE ARE THE ONLY SIGNIFICATIONS REFERRED TO IN THE SECTION. REVOCATIONS OF SIGNIFICATIONS PREVIOUSLY GIVEN OR SIGNIFICATIONS IN WRITING EXPRESSING THE DESIRE THAT THE UNION'S BARGAINING RIGHTS BE CONTINUED ARE NOT MENTIONED IN SECTION 43(3). ANY CHANGE IN THE MINDS OF THE EMPLOYEES WHO SIGNED VOLUNTARY SIGNIFICATIONS IN WRITING THAT THEY NO LONGER WISH THE UNION TO REPRESENT THEM WILL BE RESOLVED IN THE REPRESENTATION VOTE, WHICH THE SECTION WAS DESIGNED TO BRING ABOUT IF THE MINIMUM REQUIREMENTS STIPULATED IN THE SECTION ARE MET BY THE APPLICANT.

14. NOTHING HEREIN, HOWEVER, IS TO BE CONSTRUED OR INTERPRETED THAT EMPLOYEES OR THE RESPONDENT UNION MAY NOT OPPOSE AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS MADE UNDER THIS SECTION AND MAKE REPRESENTATIONS TO THE BOARD IN RESPECT OF THE TIMELINESS OF THE APPLICATION, THE BARGAINING UNIT, THE LIST OF EMPLOYEES FILED BY THE EMPLOYER, AS WELL AS ALLEGED COERCION AND INTIMIDATION.

15838-68-R: GORDON McCLENNAN (APPLICANT) v. THE INTERNATIONAL UNION OF OPERATING ENGINEERS (LOCAL 796) (RESPONDENT) v. BRUNSWICK OF CANADA LIMITED (INTERVENER).

BEFORE: H.D. BROWN, VICE-CHAIRMAN, AND BOARD MEMBERS P.J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: G. McCLENNAN AND W. KOSTICK FOR THE APPLICANT; NO ONE APPEARING FOR THE RESPONDENT; AND R.H. ROGERS AND MRS. M. TESKEY FOR THE INTERVENER.

DECISION OF THE BOARD: APRIL 14, 1969.

1. THIS IS AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS MADE PURSUANT TO SECTION 43 OF THE LABOUR RELATIONS ACT.

2. THE RESPONDENT WAS CERTIFIED FOR A UNIT OF EMPLOYEES OF THE INTERVENER ON AUGUST 28TH, 1963. THE MOST RECENT COLLECTIVE AGREEMENT BETWEEN THE INTERVENER AND THE RESPONDENT EXPIRED ON DECEMBER 31ST, 1968. AN APPLICATION FOR CONCILIATION SERVICES

WAS MADE ON DECEMBER 10TH, 1968 AND A CONCILIATION OFFICER WAS APPOINTED ON DECEMBER 17TH, 1968. BY LETTER DATED JANUARY 31ST, 1969 THE MINISTER OF LABOUR ADVISED THE PARTIES THAT HE DID NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD.

3. AN APPLICATION UNDER SECTION 43 IS SUBJECT TO THE PROVISIONS OF SECTION 46 OF THE ACT OF WHICH 46(2) IS AS FOLLOWS:

WHERE NOTICE HAS BEEN GIVEN UNDER SECTION 40 AND THE MINISTER HAS APPOINTED A CONCILIATION OFFICER OR A MEDIATOR, NO APPLICATION FOR CERTIFICATION OF A BARGAINING AGENT OF ANY OF THE EMPLOYEES IN THE BARGAINING UNIT AS DEFINED IN THE COLLECTIVE AGREEMENT AND NO APPLICATION FOR A DECLARATION THAT THE TRADE UNION THAT WAS A PARTY TO THE COLLECTIVE AGREEMENT NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT AS DEFINED IN THE AGREEMENT SHALL BE MADE AFTER THE DATE WHEN THE AGREEMENT CEASED TO OPERATE OR THE DATE WHEN THE MINISTER APPOINTED A CONCILIATION OFFICER OR A MEDIATOR, WHICHEVER IS LATER, UNLESS, FOLLOWING THE APPOINTMENT OF A CONCILIATION OFFICER OR A MEDIATOR, IF NO COLLECTIVE AGREEMENT HAS BEEN MADE,

- (A) AT LEAST TWELVE MONTHS HAVE ELAPSED FROM THE DATE OF THE APPOINTMENT OF THE CONCILIATION OFFICER OR A MEDIATOR; OR
- (B) A CONCILIATION BOARD OR A MEDIATOR HAS BEEN APPOINTED AND THIRTY DAYS HAVE ELAPSED AFTER THE REPORT OF THE CONCILIATION BOARD OR THE MEDIATOR HAS BEEN RELEASED BY THE MINISTER TO THE PARTIES; OR
- (C) THIRTY DAYS HAVE ELAPSED AFTER THE MINISTER HAS INFORMED THE PARTIES THAT HE DOES NOT DEEM IT DESIRABLE TO APPOINT A CONCILIATION BOARD.

WHICHEVER IS LATER.

IT IS CLEAR THAT THE CONDITION SET OUT IN 46(2)(A) ABOVE HAS NOT BEEN MET AND THIS APPLICATION IS THEREFORE UNTIMELY.

4. ACCORDINGLY, THE APPLICATION IS DISMISSED.

15957-69-R: ALLAN E. LEEDER, WILLIAM H. LANGMAN BERNARD A. LAW AND STANLEY M. BERRY (APPLICANTS) V. THE CANADIAN UNION OF OPERATING ENGINEERS (RESPONDENT) V. HART CHEMICAL LIMITED (INTERVENER).

BEFORE: H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON.

APPEARANCES FOR THE HEARING: A. RYDER, M.A. HEELEY FOR THE APPLICANT; ALLAN E. LEEDER, WILLIAM H. LANGMAN, STANLEY M. BERRY FOR THE RESPONDENT; F.R. VON VEH, R.L. ALLEN, D.M. BISSET FOR THE INTERVENER.

DECISION OF THE BOARD: APRIL 29, 1969.

1. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING BARGAINING RIGHTS PURSUANT TO SECTION 45(2) OF THE LABOUR RELATIONS ACT. THE RESPONDENT IN THIS MATTER SUBMITTED AMONG OTHER MATTERS, THAT THIS APPLICATION WAS UNTIMELY. THE BOARD HEARD EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES ON THIS SUBMISSION, RESERVING ITS DECISION OF ANY OF THE OTHER MATTERS INVOLVED.

2. ON OCTOBER 22ND 1968, THE RESPONDENT WAS CERTIFIED BY THE BOARD AS BARGAINING AGENT FOR ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE APPLICANT IN ITS BOILER ROOM AT GUELPH WITH CERTAIN EXCEPTIONS. NOTICE TO BARGAIN WAS GIVEN BY THE RESPONDENT TO THE APPLICANT BY TELEGRAM DATED OCTOBER 25TH 1968 WHICH WAS CONFIRMED BY LETTER DATED OCTOBER 31ST 1968. THE PARTIES MET ON NOVEMBER 25TH 1968 WITH A VIEW TO BARGAINING AND AT THE REQUEST OF THE COMPANY MR. HEELEY, A BUSINESS REPRESENTATIVE OF THE RESPONDENT, AGREED TO SUPPLY COPIES OF OTHER COLLECTIVE AGREEMENTS FOR THE COMPANY'S PERUSAL. NOTHING MORE HAPPENED UNTIL MR. HEELEY FORWARDED TEN SUCH AGREEMENTS TO THE COMPANY BY LETTER DATED FEBRUARY 10TH, 1969 IN WHICH LETTER HE ALSO ASKED THE COMPANY TO ADVISE "WHEN YOU CAN MEET TO FURTHER NEGOTIATIONS." THERE WAS NO IMMEDIATE RESPONSE TO THIS LETTER BUT MR. HEELEY WAS INVITED BY AN EMPLOYEE IN THE BARGAINING UNIT TO ATTEND AT A MEETING WITH THE COMPANY ON MARCH 26TH 1969. IT IS CLEAR FROM THE EVIDENCE THAT AT THIS MEETING AN ATTEMPT WAS MADE BY HEELEY TO CONTINUE TO BARGAIN BUT HE WAS UNSUCCESSFUL IN DOING SO. THIS APPLICATION WAS MADE ON APRIL 1ST 1969.

3. IT IS NOT NECESSARY IN THESE CIRCUMSTANCES TO DEAL IN ANY LENGTH WITH THE EVIDENCE PRESENTED TO THE BOARD IN THIS REGARD. THE FACTS SET OUT ABOVE ARE UNCONTRADICTED AND BASED ON THOSE BRIEF FACTS IT IS OBVIOUS THAT THE RESPONDENT, WHETHER SUCCESSFUL IN ITS ACTIONS OR NOT, DID ATTEMPT TO BARGAIN WITH THE COMPANY ON BEHALF OF THOSE EMPLOYEES IN THE BARGAINING UNIT WITHIN THE PERIOD OF SIXTY DAYS PRIOR TO THE DATE THIS APPLICATION WAS MADE. IT IS

NOT SUFFICIENT FOR THE PURPOSES OF SECTION 45(2) TO SUBMIT THAT BECAUSE A PERIOD OF SIXTY DAYS ELAPSED BETWEEN NOVEMBER 25TH 1968 AND FEBRUARY 10TH 1969 THAT THE APPLICATION NECESSARILY SHOULD SUCCEED. ALL OF THE RELEVANT FACTS MUST BE CONSIDERED BY THE BOARD IN THE EXERCISE OF ITS DISCRETION. IN THIS REGARD WE HAVE REFERENCE TO THE DOMINION STORES LIMITED CASE CCH CANADIAN LABOUR LAW REPORTER 1955-59 TRANSFER BINDER 16,047; GRANT READY MIX LIMITED CASE O.L.R.B. MONTHLY REPORT MARCH 1966 AT PAGE 913.

4. ON ALL THE EVIDENCE WE FIND THAT THE APPLICANT HAS NOT ESTABLISHED THAT THE RESPONDENT HAS ALLOWED A PERIOD OF SIXTY DAYS TO ELAPSE DURING WHICH IT HAS NOT SOUGHT TO BARGAIN AND IS THEREFORE NOT ENTITLED TO THE RELIEF REQUESTED.

5. THE APPLICATION IS THEREFORE DISMISSED.

15960-69-R: DOMINION WINDOW & FLOOR SERVICE LTD. (APPLICANT) v. SERVICE EMPLOYEES UNION, LOCAL 204 (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS P.J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: GEORGE BUZEK FOR THE APPLICANT; STANLEY E. ROSCOE FOR THE RESPONDENT.

DECISION OF THE BOARD: APRIL 29, 1969.

• • •

2. THIS IS AN APPLICATION UNDER SECTION 45(2) OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT FOR WHICH IT IS THE BARGAINING AGENT.

3. THE RESPONDENT WAS CERTIFIED BY THE BOARD AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE APPLICANT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR. THE DATE OF CERTIFICATION WAS JANUARY 8TH, 1969.

4. IN ACCORDANCE WITH THE PROVISIONS OF SECTION 11 OF THE ACT, THE RESPONDENT NOTIFIED THE APPLICANT BY LETTER DATED JANUARY 24, 1969 THAT IT DESIRED TO BARGAIN WITH THE VIEW OF MAKING A COLLECTIVE AGREEMENT. THE FINAL PARAGRAPH OF THE NOTICE READS AS FOLLOWS:

"THE UNION'S PROPOSALS FOR A NEW COLLECTIVE AGREEMENT WILL FOLLOW AFTER WE HAVE HAD MEETINGS WITH THE BARGAINING UNIT. WHEN YOU HAVE RECEIVED THESE PROPOSALS WE CAN THEN GET TOGETHER TO SET SUITABLE DATES WHEN WE CAN MEET."

THE PROPOSALS REFERRED TO IN THE NOTICE WERE NOT FORWARDED TO THE APPLICANT UNTIL APRIL 3, 1969, AT WHICH TIME THE RESPONDENT WAS IN RECEIPT OF NOTICE OF THE PRESENT APPLICATION. THE APPLICATION WAS MADE ON APRIL 1, 1969. NO BARGAINING FOR A COLLECTIVE AGREEMENT HAS TAKEN PLACE BETWEEN THE RESPONDENT AND THE APPLICANT.

5. MR. STANLEY ROSCOE, THE REPRESENTATIVE OF THE RESPONDENT AT THE HEARING, FRANKLY ADMITTED THAT THE UNION WAS, IN HIS WORDS, "OUTSIDE THE TIME LIMITS SET OUT IN SECTION 45(2) OF THE ACT." IT WAS ESTABLISHED IN EVIDENCE THAT MR. WARD THOMPSON, WHO IS A GENERAL REPRESENTATIVE OF THE UNION HAD, BETWEEN THE 24TH JANUARY, 1969 AND THE DATE OF THIS APPLICATION, MET TWICE WITH THE APPLICANT CONCERNING PROBLEMS OF EMPLOYEES IN THE BARGAINING UNIT. AT THE FIRST OF THESE MEETINGS, MR. THOMPSON DEALT WITH MR. GEORGE BUZEK. HE STATED THAT THERE WAS SOME TALK ABOUT BARGAINING AND THAT BUZEK HAD SAID HE WOULD LIKE TO GET STARTED AT IT. NO TIME FOR STARTING WAS DISCUSSED HOWEVER. MR. GEORGE BUZEK REPRESENTED THE APPLICANT AT THE HEARING. AT THE SECOND MEETING, MR. THOMPSON TALKED TO A BROTHER OF MR. GEORGE BUZEK ON EMPLOYEES' PROBLEMS.

6. MR. THOMPSON SAID THAT HE MET WITH THE EMPLOYEES AROUND JANUARY 23, 1969 FOR THE PURPOSE OF DISCUSSING THE PROPOSALS TO BE MADE TO THE EMPLOYER. HE SAID THAT HE HAD HAD DIFFICULTY FINDING A HALL IN WHICH TO HOLD THE MEETING, AND FOR THIS REASON WAS UNABLE TO MEET WITH THE EMPLOYEES AT AN EARLIER DATE. FOLLOWING THE DISCUSSION WITH THE EMPLOYEES, HE GAVE THE PROPOSALS TO MR. STANLEY ROSCOE IN THE FIRST PART OF FEBRUARY 1969. MR. ROSCOE IS AN OFFICER OF THE UNION STATIONED AT TORONTO. THOMPSON HELD ANOTHER MEETING WITH EMPLOYEES TOWARDS THE END OF MARCH IN ORDER TO DISCUSS WITH THEM A GRIEVANCE. HE EXPLAINED TO THEM THAT THERE WAS LITTLE THAT HE COULD DO UNTIL A COLLECTIVE AGREEMENT HAD BEEN SIGNED.

7. MR. THOMPSON TOLD THE BOARD THAT HE COULD GIVE NO EXPLANATION FOR THE DELAY IN FORWARDING THE PROPOSALS TO THE COMPANY. THIS WAS A MATTER TO BE DEALT WITH BY MR. ROSCOE AND WAS BEYOND THOMPSON'S CONTROL.

8. AS NOTED, THE PROPOSALS WERE NOT SENT TO THE COMPANY UNTIL AFTER THERECEIPT OF NOTICE OF THIS APPLICATION. ROSCOE'S ONLY EXPLANATION FOR THE DELAY HAD TO DO WITH THE PRESS OF OTHER BUSINESS AND INTERNAL OFFICE DIFFICULTIES. IN VIEW OF THE FACT THAT THE PROPOSALS WERE IN HIS HANDS IN EARLY FEBRUARY, HIS EXPLANATION OF THE DELAY IS HARDLY SATISFACTORY. THIS IS THE MORE SO SINCE ON RECEIPT OF THE NOTICE OF APPLICATION HE WAS ABLE TO GET THE PROPOSALS OUT TO THE COMPANY IMMEDIATELY. BUZEK STATED

THAT THE EMPLOYEES WERE EXPRESSING DISSATISFACTION WITH THE SITUATION AND THAT THERE HAD BEEN A CONSIDERABLE TURNOVER OF THE EMPLOYEES DURING THE PERIOD BETWEEN THE CERTIFICATION AND THE PRESENT APPLICATION.

9. AS HAS BEEN POINTED OUT IN A NUMBER OF CASES OF THIS NATURE, SECTION 45 SHOULD NOT BE USED TO PENALIZE THE UNION WHICH HAS FAILED TO COMMENCE THE BARGAINING WITHIN 60 DAYS OF GIVING THE NOTICE. THE BOARD HAS SAID THAT THE SECTION SHOULD BE USED RATHER TO AFFORD AN OPPORTUNITY FOR AN INTERESTED PARTY TO CALL THE ATTENTION OF THE BOARD TO THE SITUATION SO THAT THE BOARD MAY CALL UPON THE UNION TO EXPLAIN THE DELAY. WHERE NO SATISFACTORY EXPLANATION IS FORTHCOMING, THE BOARD, IN MANY CASES, HAS TERMINATED THE BARGAINING RIGHTS OF THE UNION INSTANTANEOUSLY. THE RELIEF SOUGHT BY THE APPLICANT IN THE PRESENT SITUATION IS AT THE DISCRETION OF THE BOARD.

10. THE BOARD FINDS THE EXPLANATION OF ROSCOE NOT TO BE SATISFACTORY. HOWEVER, IN VIEW OF THE EVIDENCE OF THOMPSON OUTLINING HIS ATTEMPTS TO REPRESENT THE EMPLOYEES' INTERESTS WITH THE APPLICANT AND HAVING IN MIND THE EVIDENCE OF BUZEK, WE ARE OF THE OPINION THAT THE DISCRETION OF THE BOARD WOULD BE PROPERLY EXERCISED IN THE PRESENT CIRCUMSTANCES BY THE ORDERING OF A REPRESENTATION VOTE.

11. THE BOARD THEREFORE DIRECTS THAT A REPRESENTATION VOTE BE TAKEN AMONG THE EMPLOYEES OF THE APPLICANT. THOSE ELIGIBLE TO VOTE ARE ALL EMPLOYEES OF THE APPLICANT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK WHO ARE EMPLOYED BY DOMINION WINDOW & FLOOR SERVICE LTD. AT ONTARIO PAPER COMPANY AT THOROLD, PROVINCIAL PAPER COMPANY AT THOROLD, KIMBERLY-CLARK COMPANY AT THOROLD, BREWER'S RETAIL (MAIN OFFICE) AT ST. CATHARINES AND ANTHES IMPERIAL AT ST. CATHARINES, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN.

12. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE RESPONDENT.

13. THE MATTER IS REFERRED TO THE REGISTRAR.

16002-69-R: INTERCHEM PRESSTITE LIMITED (APPLICANT) v. BROTHERHOOD OF SEALANT WORKERS OF ONTARIO (RESPONDENT).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: G. FERGUSON, Q.C., R. MCCOMB, S. RAPAPORT AND R. KENNEDY FOR THE APPLICANT, NO ONE FOR THE RESPONDENT.

DECISION OF THE BOARD: APRIL 29, 1969.

1. THE APPLICANT IS APPLYING TO THE BOARD UNDER SECTION 45 OF THE ACT FOR A DECLARATION THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT FOR WHICH IT IS THE BARGAINING AGENT.

2. THE APPLICANT AND THE RESPONDENT ENTERED INTO A COLLECTIVE AGREEMENT EFFECTIVE FROM APRIL 1ST, 1966 UNTIL APRIL 1ST, 1968 AND FROM YEAR TO YEAR THEREAFTER UNTIL AND UNLESS EITHER PARTY HAS NOTIFIED THE OTHER PARTY IN WRITING BY REGISTERED MAIL NOT LESS THAN SIXTY (60) DAYS BEFORE THE EXPIRATION OF THE AGREEMENT. NEITHER PARTY GAVE NOTICE AS REQUIRED ABOVE AND THE COLLECTIVE AGREEMENT AUTOMATICALLY RENEWED ITSELF FOR A FURTHER YEAR.

3. ACCORDING TO THE EVIDENCE OF SHERMAN RAPAPORT, THE PLANT MANAGER OF THE APPLICANT, THE COMPANY SENT A LETTER BY REGISTERED MAIL TO THE RESPONDENT ON JANUARY 27TH, 1969 ADVISING THE RESPONDENT OF THE COMPANY'S DESIRE TO TERMINATE THE COLLECTIVE AGREEMENT AS OF ITS EXPIRY DATE ON APRIL 1ST, 1969. THIS LETTER WAS SENT TO ROBERT GILKES, WHO WAS THE PRESIDENT OF THE RESPONDENT UNION. THERE HAS BEEN NO ACKNOWLEDGMENT OF THE LETTER NOR HAS THE RESPONDENT UNION IN ANY WAY INDICATED ITS DESIRE TO COMMENCE BARGAINING FOR THE RENEWAL OF THE COLLECTIVE AGREEMENT.

4. RAPAPORT TESTIFIED THAT SINCE MARCH OF 1968, THE RESPONDENT HAS MADE NO EFFORT TO ADMINISTER THE COLLECTIVE AGREEMENT NOR HAVE ANY GRIEVANCES BEEN FILED UNDER THE AGREEMENT. INDEED, ACCORDING TO THE EVIDENCE THE RESPONDENT HAS IN NO WAY COMMUNICATED WITH THE APPLICANT OVER THE PAST YEAR. THE EVIDENCE OF RAPAPORT IN FACT SUGGESTS THAT THE RESPONDENT HAS CEASED TO FUNCTION AS A TRADE UNION. WE WOULD MENTION FURTHER THAT NO REPLY TO THIS APPLICATION WAS MADE BY THE RESPONDENT.

5. SECTION 45(1) OF THE LABOUR RELATIONS ACT READS:

IF A TRADE UNION FAILS TO GIVE THE EMPLOYER NOTICE UNDER SECTION 11 WITHIN SIXTY DAYS FOLLOWING CERTIFICATION OR IF IT FAILS TO GIVE NOTICE UNDER SECTION 40 AND NO SUCH NOTICE IS GIVEN BY THE EMPLOYER, THE BOARD MAY, UPON THE APPLICATION OF THE EMPLOYER OR OF ANY OF THE EMPLOYEES IN THE BARGAINING UNIT, AND WITH OR WITHOUT A REPRESENTATION VOTE, DECLARE THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT.

6. NEITHER PARTY TO THE COLLECTIVE AGREEMENT GAVE NOTICE IN WRITING TO THE OTHER PARTY OF ITS DESIRE TO BARGAIN WITH A VIEW TO THE RENEWAL OF THE COLLECTIVE AGREEMENT WITHIN THE 60 DAY PERIOD SPECIFIED IN THE AGREEMENT. RATHER, WITHIN THAT PERIOD THE APPLICANT SERVED NOTICE ON THE RESPONDENT OF ITS DESIRE TO TERMINATE THE AGREEMENT ON APRIL 1ST, 1969.

7. IT IS CLEAR FROM THE EVIDENCE THAT THE APPLICATION OF THE APPLICANT IS TIMELY. FURTHER, HAVING REGARD TO ALL THE CIRCUMSTANCES OUTLINED ABOVE, THE BOARD IN THE EXERCISE OF ITS DISCRETION UNDER SECTION 45(1) FINDS THAT THE APPLICANT IS ENTITLED TO THE RELIEF WHICH IT IS SEEKING WITHOUT THE TAKING OF A REPRESENTATION VOTE.

8. THE BOARD ACCORDINGLY DECLares THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES OF INTERCHEM PRESSTITE LIMITED AT GEORGETOWN FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT.

INDEXED ENDORSEMENTS - PROSECUTIONS

15382-68-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW (APPLICANT) v. NORTH AMERICAN PLASTICS CO. LIMITED, MICHAEL LADNEY, WILLIAM LATHAM, PETER EMANUEL AND FRANK CORCORAN (RESPONDENTS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: KENNETH SIMPSON, LENNOX MCLEAN FOR THE APPLICANT AND F.W. KNIGHT FOR THE RESPONDENT.

DECISION OF O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBER
O. HODGES: APRIL 14, 1969.

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE PROSECUTION FOR ALLEGED VIOLATIONS OF SECTION 12, 48, 50 AND 52 OF THE LABOUR RELATIONS ACT.

2. AT THE CONCLUSION OF THE EVIDENCE COUNSEL FOR THE APPLICANT ADVISED THE BOARD HE WAS PROCEEDING ONLY WITH RESPECT TO THE ALLEGED VIOLATION CONCERNING SECTION 12 OF THE LABOUR RELATIONS ACT. HAVING HEARD THE EVIDENCE WITH RESPECT TO THE OTHER MATTERS THE APPLICATION FOR ALLEGED VIOLATIONS CONTRARY TO SECTION 48, 50 AND 52 IS HEREBY DISMISSED.

3. THERE BEING NO EVIDENCE ADDUCED THAT THE RESPONDENT FRANK CORCORAN HAS VIOLATED SECTION 12 OF THE LABOUR RELATIONS ACT THE APPLICATION IS DISMISSED AS AGAINST FRANK CORCORAN.

4. THE RESPONDENT ELECTED TO CALL NO EVIDENCE CONSEQUENTLY THE ONLY EVIDENCE WITHIN THE LIMITATION PERIOD AS SET OUT IN SECTION 693(2) OF THE CRIMINAL CODE WHICH ASSOCIATES MICHAEL LADNEY WITH THE ALLEGED OFFENCE WAS THE EVIDENCE OF MR. OANA. THAT LIMITATION PERIOD IS A RELEVANT CONSIDERATION FOR THIS BOARD IN DEALING WITH CONSENTS TO PROSECUTE PURSUANT TO SECTION 74 OF THE LABOUR RELATIONS ACT. FRASER BRACE ENGINEERING COMPANY LIMITED, BOARD FILE NO. 15000-68-U, JANUARY 29TH, 1969.

5. MR. OANA WHO IS AN OFFICIAL OF THE APPLICANT TESTIFIED THAT CERTAIN STATEMENTS WERE MADE TO HIM BY MR. EMANUEL, ONE OF THE RESPONDENTS. MR. EMANUEL HAD ATTENDED AT VARIOUS MEETINGS ON BEHALF OF THE RESPONDENT, NORTH AMERICAN PLASTICS CO. LIMITED, FOR THE SUGGESTED PURPOSE OF NEGOTIATING A COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND NORTH AMERICAN PLASTICS CO. LIMITED.

6. THE STATEMENTS MADE BY MR. EMANUEL ARE EVIDENCE AGAINST MR. LADNEY IF THEY WERE MADE BY MR. EMANUEL AS THE AGENT FOR MR. LADNEY. THE PROBLEM OF ADMISSIONS BY AN AGENT HAS RECENTLY BEEN CANVASSED BY THE ONTARIO COURT OF APPEAL AND THE PRINCIPLES CONTAINED THEREIN ARE OF ASSISTANCE IN DECIDING THE INSTANT CASE. REGINA V. STRAND ELECTRIC LTD. (1969), 1 O.R. 190.

7. WHILE LASKIN J. A. DISSENTED AS TO THE APPLICATION OF THE FACTS IN THE STRAND ELECTRIC LTD. CASE WE ADOPT HIS STATEMENT OF THE LAW WITH RESPECT TO THE RECEPTION OF AN AGENT'S ADMISSION AGAINST HIS PRINCIPAL. HE STATED AT PAGE 200:

"TWO PROPOSITIONS UNDERLIE THE RECEPTION OF AN AGENT'S ADMISSIONS AGAINST HIS PRINCIPAL. THERE MUST, FIRST, BE PROOF OF THE AGENCY; AND, AS THE TEXTBOOKS SAY, UNLESS THE ALLEGED AGENT TESTIFIES HIMSELF TO HIS AGENCY, HIS ASSERTIONS THAT HE IS AN AGENT, OFFERED THROUGH THE MOUTH OF ANOTHER, ARE INADMISSIBLE BECAUSE AS HEARSAY THEY BEG THE QUESTION: SEE 4 WIGMORE ON EVIDENCE, 3RD ED., P. 123; CROSS ON EVIDENCE, 3RD ED., P. 442. SECOND, THE ADMISSIONS OF THE AGENT TENDERED AGAINST THE PRINCIPAL MUST HAVE BEEN MADE TO A THIRD PARTY WITHIN THE SCOPE OF HIS AUTHORITY DURING THE SUBSISTENCE OF THE AGENCY: WIGMORE ON EVIDENCE, OP. CIT., P. 119; CROSS ON EVIDENCE, OP. CIT., PP. 441-2...."

8. APPLYING THAT STATEMENT TO THE EVIDENCE IN THIS CASE WE FIND THAT THE APPLICANT HAS NOT SATISFIED EITHER OF THE AFORESAID PROPOSITIONS.

9. WHILE MR. EMANUEL INDICATED THAT MR. LADNEY SIGNED HIS CHEQUES THE EVIDENCE INDICATED THAT MR. EMANUEL WAS EMPLOYED BY NORTH AMERICAN PLASTICS CO. LIMITED AND IT IS REASONABLE TO ASSUME FROM ALL THE EVIDENCE THAT MR. LADNEY SIGNED SUCH CHEQUES AS THE SIGNING OFFICER FOR AND ON BEHALF OF NORTH AMERICAN PLASTICS CO. LIMITED AND NOT AS THE PRINCIPAL FOR MR. EMANUEL. THERE IS ALSO NO EVIDENCE TO INDICATE THAT MR. EMANUEL WAS THE AGENT FOR MR. LADNEY IN ANY CAPACITY WHATSOEVER.

10. EVEN IF WE WERE TO ASSUME THAT MR. EMANUEL WAS AN AGENT FOR MR. LADNEY THERE IS NO EVIDENCE THAT MR. EMANUEL'S ADMISSIONS WERE MADE TO MR. OANA WITHIN THE SCOPE OF HIS AUTHORITY AND DURING THE SUBSISTENCE OF THE AGENCY. THE EVIDENCE DOES NOT INDICATE WHAT HIS RESPONSIBILITIES WERE ON BEHALF OF MR. LADNEY, NOR DOES THE EVIDENCE INDICATE THE EXTENT OF MR. EMANUEL'S AUTHORITY ON BEHALF OF MR. LADNEY.

11. IN THE RESULT THE APPLICATION WITH RESPECT TO MICHAEL LADNEY IS DISMISSED.

12. HAVING REGARD TO ALL THE EVIDENCE ADDUCED THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AS FOLLOWS:

- a) THAT THE RESPONDENT NORTH AMERICAN PLASTICS CO. LIMITED, AND THE RESPONDENTS, WILLIAM LATHAM AND PETER EMANUEL ON ITS BEHALF, HAVE FAILED TO MEET AND TO BARGAIN IN GOOD FAITH AND TO MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT WITH THE APPLICANT CONTRARY TO THE PROVISIONS OF SECTION 12 OF THE LABOUR RELATIONS ACT.

DECISION OF BOARD MEMBER H.F. IRWIN: APRIL 14, 1969.

1. I DISSENT.
2. THE APPLICANT UNION APPLIED TO THE BOARD FOR LEAVE TO PROSECUTE THE RESPONDENT COMPANY FOR ALLEGED VIOLATIONS OF SECTIONS 12, 48, 50 AND 52 OF THE LABOUR RELATIONS ACT. SUBSEQUENTLY, THE APPLICANT ASKED LEAVE OF THE BOARD TO WITHDRAW THE APPLICATIONS IN RESPECT OF SECTIONS 48, 50 AND 52 AND IN ACCORDANCE WITH BOARD PRACTICE THESE APPLICATIONS WERE DISMISSED. THE ONLY APPLICATION NOW BEFORE THE BOARD IS IN RESPECT OF SECTION 12 OF THE ACT. THE APPLICANT ASKS LEAVE TO PROSECUTE THE RESPONDENT FOR FAILURE TO BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT.
3. LABOUR ORGANIZATIONS IN CANADA, FIFTY-SEVENTH EDITION, 1968, AS PUBLISHED BY THE ECONOMICS AND RESEARCH BRANCH, CANADA DEPARTMENT OF LABOUR, OTTAWA, AT PAGE VIII, RANKS THE APPLICANT UNION AS THE SECOND LARGEST TRADE UNION IN CANADA WITH A TOTAL CANADIAN MEMBERSHIP AS OF JANUARY, 1968, OF 127,000 MEMBERS.
4. THE APPLICANT UNION IS NOT A NEWBIE IN THE FIELD OF COLLECTIVE BARGAINING. ON THE CONTRARY, IT HAS HAD MANY YEARS OF EXPERIENCE IN NEGOTIATING COLLECTIVE AGREEMENTS IN A WIDE RANGE OF INDUSTRIES. IT IS ACCUSTOMED TO DEALING WITH THE GIANTS OF INDUSTRY INCLUDING THE "BIG 3" MOTOR CAR MANUFACTURERS.
5. ON THE OTHER HAND, THE RESPONDENT IS A RELATIVELY SMALL COMPANY WITH A FACTORY LOCATED AT WALLACEBURG. IT WOULD APPEAR THAT THE RESPONDENT COMPANY HAS HAD NO PREVIOUS EXPERIENCE IN COLLECTIVE BARGAINING.
6. THE APPLICANT UNION WAS CERTIFIED BY THIS BOARD ON OR ABOUT NOVEMBER 29TH, 1967, AS BARGAINING AGENT FOR ALL PLANT EMPLOYEES OF THE RESPONDENT AT WALLACEBURG BELOW THE RANK OF FOREMAN AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD.
7. ON DECEMBER 7TH, 1967, THE APPLICANT GAVE THE RESPONDENT WRITTEN NOTICE OF ITS DESIRE TO COMMENCE BARGAINING FOR A COLLECTIVE AGREEMENT AS REQUIRED UNDER THE PROVISIONS OF SECTION 11 OF THE ACT. THE FIRST MEETING BETWEEN THE PARTIES WAS HELD ON JANUARY 10TH, 1968. OTHER MEETINGS FOLLOWED AND IN MARCH THE APPLICANT REQUESTED THE MINISTER OF LABOUR TO APPOINT A CONCILIATION OFFICER TO CONFER WITH THE PARTIES AND ENDEAVOUR TO EFFECT A COLLECTIVE AGREEMENT. THE APPOINTMENT WAS MADE ON MARCH 20TH, 1968, AND THE OFFICER MET WITH THE PARTIES ON APRIL 9TH, 1968.

8. IN ALL, PRIOR TO THE COMMENCEMENT OF THE STRIKE, THERE WERE 14 MEETINGS BETWEEN THE PARTIES WITH A TOTAL ELAPSED BARGAINING TIME OF APPROXIMATELY 30 HOURS. THE LAST MEETING TOOK PLACE ON MAY 17TH, 1968, WHICH WAS THE DAY BEFORE THE STRIKE COMMENCED. AT THAT TIME, THE PARTIES HAD REACHED AGREEMENT ON ALL BUT THREE ISSUES, VIZ. UNION SECURITY, GRIEVANCE PROCEDURE AND THE METHOD OF APPLYING THE 10¢ PER HOUR BONUS WHICH HAD BEEN IN EFFECT PRIOR TO CERTIFICATION.

9. THE APPLICANT AND THE RESPONDENT EACH RECEIVED THROUGH THE MAIL A LETTER SIGNED ON BEHALF OF THE DEPUTY MINISTER OF LABOUR WHICH WAS DATED AND POSTMARKED MAY 2ND, 1968. IT ADVISED THE PARTIES THAT THE MINISTER OF LABOUR DID NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD. CONSEQUENTLY, IN ACCORDANCE WITH THE PROVISIONS OF SECTIONS 54(2) AND 85(3)(A) OF THE LABOUR RELATIONS ACT, A LAWFUL STRIKE COULD NOT TAKE PLACE PRIOR TO MAY 19TH, 1968. AS THE APPLICANT CALLED AND THE EMPLOYEES PARTICIPATED IN A STRIKE ON MAY 18TH, 1968, THE FIRST 24 HOURS OF THE STRIKE WAS UNLAWFUL. THE APPLICANT ITSELF, THEREFORE, IS NOT BEFORE THE BOARD WITH CLEAN HANDS.

10. UNDOUBTEDLY, THERE HAD BEEN HARD BARGAINING ON BOTH SIDES PRIOR TO THE COMMENCEMENT OF THE STRIKE. THIS, HOWEVER, DOES NOT NECESSARILY CONSTITUTE BAD FAITH BARGAINING. IF THE APPLICANT WAS OF THE OPINION THAT THE RESPONDENT WAS BARGAINING IN BAD FAITH CONTRARY TO THE PROVISIONS OF SECTION 12 OF THE ACT, IT COULD HAVE MADE AN APPLICATION TO THE BOARD FOR CONSENT TO PROSECUTE AT THAT TIME. IT DID NOT CHOOSE TO DO SO BUT DECIDED TO PLACE IMMEDIATE ECONOMIC PRESSURE ON THE RESPONDENT BY TAKING THE EMPLOYEES OUT ON STRIKE. SEVEN MONTHS LATER, ALTHOUGH THE STRIKE IS STILL IN PROGRESS, THE RESPONDENT COMPANY CONTINUES TO OPERATE THE PLANT ON A THREE SHIFT BASIS. OBVIOUSLY, THE UNION NOW REALIZES IT IS NOT WINNING THE STRIKE AND SEEKS TO REGAIN SOME OF ITS LOST PRESTIGE AND TO MAINTAIN THE SUPPORT OF THE EMPLOYEES IN THE BARGAINING UNIT BY PROSECUTING THE RESPONDENT FOR ALLEGED BARGAINING IN BAD FAITH.

11. THE RESPONDENT HAS CONTINUED TO MEET AND BARGAIN WITH THE APPLICANT DURING THE STRIKE NOT WITHSTANDING THAT THERE HAS BEEN HEAVY DAMAGE TO PLANT PROPERTY ALLEGEDLY BY PICKETERS. SEVEN SUCH MEETINGS WITH A TOTAL ELAPSED TIME OF APPROXIMATELY THIRTY HOURS WERE HELD BETWEEN MAY 18TH AND NOVEMBER 21ST, 1968, WHICH WAS THE DATE OF THE LAST MEETING.

12. IN THESE CIRCUMSTANCES, THIS APPLICATION WHICH WAS FILED WITH THE BOARD ON NOVEMBER 26TH CAN ONLY BE INTERPRETED AS PURELY VEXATIOUS IN CHARACTER. TO GRANT LEAVE TO PROSECUTE WILL NOT IMPROVE THE RELATIONSHIP BETWEEN THE PARTIES NOR WILL IT ASSIST IN EFFECTING A COLLECTIVE AGREEMENT BETWEEN THEM.

13. THIS IS PRECISELY THE TYPE OF SITUATION IN WHICH THE BOARD SHOULD EXERCISE ITS DISCRETION AND REFUSE TO GRANT LEAVE TO THE APPLICANT TO PROSECUTE THE RESPONDENT. IT IS A LONG STANDING POLICY OF THE BOARD THAT IT WILL REFUSE TO GRANT SUCH LEAVE IF THE APPLICATION IS EITHER FRIVOLOUS OR VEXATIOUS.

14. FOR THESE REASONS, I WOULD HAVE DISMISSED THE APPLICATION.

15487-68-U: BRAMPTON TRUCK DRIVERS ASSOCIATION, LOCAL NO. 54, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. BRAMPTON TRANSPORT LIMITED(RESPONDENT).

BEFORE: H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS D.B. ARCHER AND H.F. IRWIN.

APPEARANCES AT THE HEARING: W.I.C. BINNIE, D.D. WHITE, E. VANDERKLOET FOR THE APPLICANT; T.F. STORIE, S. HARKEMA, W. JOHNSON FOR THE RESPONDENT.

DECISION OF H.D. BROWN, VICE-CHAIRMAN AND D.B. ARCHER, BOARD MEMBER: APRIL 23, 1969.

1. THIS IS AN APPLICATION FOR CONSENT TO THE INSTITUTION OF A PROSECUTION FOR ALLEGED VIOLATIONS OF SECTIONS 50(A)(B)(C), 52 AND 53 OF THE LABOUR RELATIONS ACT.

2. HAVING CAREFULLY REVIEWED ALL OF THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES WE FIND THAT THE APPLICANT DID NOT ESTABLISH A PRIMA FACIE CASE TO SUPPORT THE CONSENT REQUESTED OF THE BOARD RELATING TO OFFENCES UNDER SECTIONS 50(A), 50(B) AND 50(C) OF THE LABOUR RELATIONS ACT. SECTION 53 OF THE ACT DOES NOT CLOSE AN OFFENCE FOR WHICH CONSENT IN THIS APPLICATION SHOULD BE GRANTED.

3. CONSEQUENTLY THE APPLICATION IS DISMISSED WITH RESPECT TO THE ALLEGATIONS OF VIOLATIONS OF SECTIONS 50(A), 50(B), 50(C) AND 53 OF THE ACT.

4. THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:

THAT THE RESPONDENT DID SEEK BY INTIMIDATION OR COERCION TO COMPEL EMPLOYEES IN THE BARGAINING UNIT TO REFRAIN FROM CONTINUING AS MEMBERS OF THE APPLICANT AND TO REFRAIN FROM EXERCISING

ANY OTHER RIGHTS UNDER THE ACT CONTRARY TO
THE PROVISIONS OF SECTION 52 OF THE LABOUR
RELATIONS ACT.

5. THE APPROPRIATE DOCUMENTS WILL ISSUE.

DECISION OF H.F. IRWIN: APRIL 23, 1969.

1. I CONCUR IN THE DECISION OF THE MAJORITY THAT THE APPLICANT DID NOT ESTABLISH A PRIMA FACIE CASE TO SUPPORT THE CONSENT REQUESTED OF THE BOARD RELATING TO THE ALLEGED OFFENCES UNDER SECTIONS 50(A), 50(B), 50(C) OF THE LABOUR RELATIONS ACT AND THAT THE PROVISIONS OF SECTION 53 OF THE ACT DO NOT DISCLOSE AN OFFENCE FOR WHICH CONSENT TO PROSECUTE SHOULD BE GRANTED. THE APPLICATION IS DISMISSED IN RESPECT OF ALL THESE ALLEGATIONS.

2. I DISSENT FROM THE DECISION OF THE MAJORITY THAT CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR OFFENCES ALLEGED TO HAVE BEEN COMMITTED BY IT CONTRARY TO THE PROVISIONS OF SECTION 52 OF THE ACT. ON THE EVIDENCE ADDUCED AT THE HEARINGS, I MUST FIND THAT APPLICANT FAILED TO ESTABLISH A PRIMA FACIE CASE TO SUPPORT THE CONSENT REQUESTED OF THE BOARD RELATING TO ALLEGED VIOLATIONS OF THE PROVISIONS OF SECTION 52 OF THE ACT AND I WOULD HAVE DISMISSED THE APPLICATION.

3. I AM SATISFIED THAT IN THE INAUGURATION OF A BROKER SYSTEM FOR TRUCK DRIVERS THE RESPONDENT COMPANY ACTED IN GOOD FAITH AT ALL TIMES. THE SYSTEM WAS INTRODUCED SOLELY IN THE INTERESTS OF EFFICIENCY AND TO PLACE THE COMPANY'S OPERATIONS ON A COMPETITIVE BASIS. THERE ISN'T A TITTLE OF EVIDENCE THAT THE RESPONDENT DID NOT ACT IN GOOD FAITH OR THAT IT SOUGHT TO TERMINATE THE BARGAINING RIGHTS OF THE APPLICANT UNION.

4. EMPLOYEES WERE INFORMED OF THE RESPONDENT'S INTENTION TO INSTITUTE THE BROKERAGE SYSTEM AND THOSE INTERESTED WERE INVITED TO RESPOND TO THE PROPOSAL. THOSE WHO DID RESPOND WERE GIVEN FULL DETAILS OF THE PLAN AND WERE INFORMED THAT ANY DECISION ON THEIR PART TO PURSUE THE MATTER FURTHER MUST BE INITIATED BY THEM AND NOT THE RESPONDENT COMPANY. EACH EMPLOYEE WAS ALSO ADVISED THAT HE SHOULD CONSIDER SEEKING LEGAL OR OTHER ADVICE BEFORE MAKING A FINAL DECISION. HE WAS ALSO TOLD THAT IF HE DECIDED NOT TO ACCEPT THE OFFER TO BECOME A BROKER THAT SUCH REFUSAL, WOULD PER SE, IN NO WAY AFFECT HIS RATE OF PAY, SENIORITY OR JOB SECURITY WITH THE COMPANY.

5. AS THE REAL ISSUE BETWEEN THE PARTIES APPEARS TO BE STATUS OF THE BROKER TRUCK DRIVERS, THAT IS, WHETHER OR NOT THEY ARE INDEPENDENT CONTRACTORS OR EMPLOYEES UNDER THE ACT AND THIS ISSUE IS PRESENTLY BEING DETERMINED BY ANOTHER PANEL OF THIS BOARD, IT MAY WELL BE THAT NO USEFUL PURPOSE CAN BE SERVED IN GRANTING CONSENT AT THIS TIME.

6. IN THESE CIRCUMSTANCES, EVEN IF I HAD FOUND THAT THE APPLICANT HAD MADE OUT A PRIMA FACIE CASE, I WOULD HAVE EXERCISED THE DISCRETION GIVEN THE BOARD UNDER THE ACT AND REFUSED TO GRANT CONSENT TO PROSECUTE.

15488-68-U: BRAMPTON TRUCK DRIVERS ASSOCIATION, LOCAL No. 54,
AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA
(APPLICANT) v. BRAMPTON TRANSPORT LIMITED (RESPONDENT).

BEFORE: H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
D.B. ARCHER AND H.F. IRWIN.

APPEARANCES AT THE HEARING: W.I.C. BINNIE, D.D. WHITE, E.
VANDERKLOET FOR THE APPLICANT; T.F. STORIE, S. HARKEMA,
W. JOHNSON FOR THE RESPONDENT.

DECISION OF H.D. BROWN, VICE-CHAIRMAN AND D.B. ARCHER, BOARD MEMBER:
APRIL 23, 1969.

1. THIS IS AN APPLICATION FOR CONSENT TO THE INSTITUTION OF A PROSECUTION FOR ALLEGED VIOLATIONS OF SECTIONS 48 AND 51(1) OF THE LABOUR RELATIONS ACT.

2. HAVING REGARD TO ALL THE EVIDENCE ADDUCED AT THE HEARING AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AS FOLLOWS:

THAT THE RESPONDENT WRONGFULLY INTERFERED WITH THE REPRESENTATIONS OF ITS TRUCK DRIVER EMPLOYEES BY THE APPLICANT IN ATTEMPTING TO BARGAIN DIRECTLY WITH SUCH EMPLOYEES AND PURPORTING TO ENTER INTO A COLLECTIVE AGREEMENT DIRECTLY WITH SUCH EMPLOYEES CONTRARY TO THE PROVISIONS OF SECTIONS 48 AND 51(1) OF THE LABOUR RELATIONS ACT.

3. THE APPROPRIATE DOCUMENTS WILL ISSUE.

DECISION OF BOARD MEMBER H.F. IRWIN:

APRIL 23, 1969.

1. I DISSENT.

2. ON THE EVIDENCE ADDUCED AT THE HEARINGS, I MUST FIND THAT THE APPLICANT FAILED TO ESTABLISH A PRIMA FACIE CASE TO SUPPORT THE CONSENT REQUESTED OF THE BOARD RELATING TO ALLEGED VIOLATIONS OF THE PROVISIONS OF SECTIONS 48 AND 51(1) OF THE LABOUR RELATIONS ACT. FOR THIS AND THE ADDITIONAL REASONS GIVEN BY ME IN THE OTHER APPLICATION FILED BY THE APPLICANT (FILE NO. 15487-68-U), I WOULD HAVE REFUSED CONSENT TO PROSECUTE IN THE INSTANT CASE AND DISMISSED THE APPLICATION.

15651-68- : THE INTERNATIONAL LADIES GARMENT WORKERS UNION (APPLICANT) v. FORMFIT INTERNATIONAL, S.A. (RESPONDENT).

BEFORE: H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS P.J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: A. MAGERMAN, J. KITTS FOR THE APPLICANT NORMAN L. MATHEWS, Q.C., WILFRED J. MOSS, WILLIAM H. ARMSTRONG FOR THE RESPONDENT.

DECISION OF H.D. BROWN, VICE-CHAIRMAN AND P.J. O'KEEFFE,

BOARD MEMBER: APRIL 18, 1969.

1. THIS IS AN APPLICATION FOR CONSENT TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:

(A) THE RESPONDENT HAS FAILED TO BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT CONTRARY TO SECTION 12 OF THE LABOUR RELATIONS ACT.

(B) THE RESPONDENT HAS INTERFERED WITH THE REPRESENTATION OF THE EMPLOYEES BY THE APPLICANT CONTRARY TO SECTION 48 OF THE LABOUR RELATIONS ACT.

(C) THE RESPONDENT HAS BY THREAT, SOUGHT TO COMPEL ITS EMPLOYEES TO CEASE BEING MEMBERS OF THE APPLICANT CONTRARY TO SECTION 50(C) OF THE LABOUR RELATIONS ACT.

(D) THE RESPONDENT HAS SOUGHT BY INTIMIDATION OR COERCION TO COMPEL ITS EMPLOYEES TO REFRAIN FROM BECOMING OR TO CONTINUE TO BE MEMBERS OF THE APPLICANT, CONTRARY TO SECTION 52 OF THE LABOUR RELATIONS ACT.

(E) THE RESPONDENT HAS ATTEMPTED TO PERSUADE ITS EMPLOYEES DURING WORKING HOURS AND AT THE PLACE AT WHICH ITS EMPLOYEES WORK TO REFRAIN FROM BECOMING OR CONTINUING TO BE A MEMBER OF THE APPLICANT CONTRARY TO SECTION 53 OF THE LABOUR RELATIONS ACT.

2. HAVING REGARD TO THE EVIDENCE IN THIS MATTER WE FIND THAT THERE IS NO EVIDENCE TO SUPPORT THE APPLICANT'S ALLEGATIONS WITH RESPECT TO A VIOLATION OF THE RESPONDENT OF SECTIONS 50(c), 52 OR 53 OF THE LABOUR RELATIONS ACT. THE APPLICANT ALLEGED THAT THE RESPONDENT VIOLATED SECTION 12 OF THE ACT BY PUTTING INTO EFFECT, AFTER THE MINISTER OF LABOUR ADVISED THE PARTIES OF HIS DECISION NOT TO APPOINT A BOARD OF CONCILIATION, CONDITIONS OF EMPLOYMENT WHICH WERE SUBSTANTIALLY DIFFERENT THAN THOSE OFFERED DURING BARGAINING PRIOR TO THAT TIME. THE EVIDENCE OF THE WITNESSES CALLED BY THE APPLICANT DOES NOT GIVE SUPPORT TO THIS CONTENTION AND WE ARE SATISFIED THAT THE CONDITIONS MADE EFFECTIVE ON FEBRUARY 10TH, 1969 WERE THE SAME AS MADE DURING PRIOR BARGAINING. WE FIND ON ALL THE EVIDENCE THAT THE RESPONDENT DID NOT CONTRAVENE SECTION 12 OF THE ACT.

3. HAVING REGARD TO THE ABOVE THE APPLICATION IS DISMISSED WITH RESPECT TO THE ALLEGATIONS OF VIOLATION OF SECTIONS 12, 50 (c), 52 AND 53 OF THE ACT.

4. THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED:

THAT THE RESPONDENT DID CONTRAVENE SECTION 48 OF THE LABOUR RELATIONS ACT IN THAT ON OR ABOUT FEBRUARY 5TH AND FEBRUARY 6TH, 1969, THE RESPONDENT DID INTERFERE WITH THE REPRESENTATION OF THE EMPLOYEES BY A TRADE UNION.

5. THE APPROPRIATE DOCUMENTS WILL ISSUE.

1. I AM IN AGREEMENT WITH THAT PORTION OF THE DECISION OF THE MAJORITY WHICH DISMISSES THE APPLICATION FOR CONSENT TO THE INSTITUTION OF A PROSECUTION FOR ALLEGED VIOLATIONS OF SECTIONS 12, 50(c), 52, AND 53 OF THE LABOUR RELATIONS ACT.

2. I DISSENT, HOWEVER, FROM THAT PORTION OF THE DECISION OF THE MAJORITY WHICH GRANTS CONSENT TO THE APPLICANT TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE ALLEGED OFFENCE OF HAVING CONTRAVENED SECTION 48 OF THE LABOUR RELATIONS ACT BY INTERFERING WITH THE REPRESENTATION OF THE EMPLOYEES BY A TRADE UNION.

3. IT HAS BEEN SAID IN MANY DECISIONS OF THIS BOARD IN APPLICATIONS FOR CONSENT TO INSTITUTE A PROSECUTION THAT THE APPLICANT NEED ONLY SHOW A PRIMA FACIE CASE OR AN ARGUABLE POINT OF LAW. THE CASES DO NOT, HOWEVER, SAY THAT IN EVERY CASE WHERE THERE IS AN ARGUMENT AS TO THE FACTS, OR THE LAW, THAT THE BOARD WILL GRANT ITS CONSENT. THERE IS STILL THE ONUS UPON THE APPLICANT OF ESTABLISHING A PRIMA FACIE CASE.

4. WHAT IS A PRIMA FACIE CASE? BOUVIER'S LAW DICTIONARY DEFINES "PRIMA FACIE" AS EVIDENCE OF FACT IN LAW SUFFICIENT TO ESTABLISH THE FACT, UNLESS REBUTTED. PRIMA FACIE EVIDENCE IS DEFINED AS EVIDENCE WHICH, UNEXPLAINED AND UNCONTRADICTED, APPEARS TO BE SUFFICIENT TO ESTABLISH THE FACT, OR WHICH WOULD WARRANT A FINDING OF THE FACT OR MATTER, TO SUPPORT OR PROVE WHICH IT IS INTRODUCED. IT IS EVIDENCE WHICH SUFFICES TO ESTABLISH THE FACT UNLESS REBUTTED OR UNTIL OVERCOME BY OTHER EVIDENCE. IT IS NOT CONCLUSIVE, BUT MAY BE CONTRADICTED OR CONTROLLED. PRIMA FACIE EVIDENCE IS SUFFICIENT TO OUTWEIGH THE PRESUMPTION OF INNOCENCE, AND, IF NOT MET BY OPPOSING EVIDENCE, TO SUPPORT A VERDICT. (THE UNDERLINING IS MINE).

5. IN MY OPINION, THE STANDARD WHICH THE BOARD SHOULD ADOPT (THOUGH RESPECTFULLY, IN MY OPINION, IT HAS NOT ALWAYS DONE SO) IS THAT STANDARD SET OUT IN THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO AND M. N. BAIN ET AL, O.L.R.B. MONTHLY REPORT, APRIL 1964, P. 39, IN WHICH THE BOARD SAID INTER ALIA:-

"WHILE IN APPLICATIONS FOR CONSENT TO PROSECUTE, THE WEIGHT OF RELIABLE EVIDENCE NEED NOT GO TO THE LENGTH OF PROVING THE COMMISSION OF THE OFFENCE, IT MUST ----- SHOW A PRIMA FACIE CASE ----- THAT THE RESPONDENT IS PROBABLY GUILTY OF THE OFFENCE CHARGED."

6. THE MAJORITY OF THIS PANEL HAVE GRANTED CONSENT TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR AN ALLEGED VIOLATION OF SECTION 48 OF THE LABOUR RELATIONS ACT.

7. SECTION 48 OF THE LABOUR RELATIONS ACT (AND I REPRODUCE ONLY THAT PORTION WHICH IS SIGNIFICANT AND APPLICABLE TO BOTH THE FINDING OF THE MAJORITY AND TO MY OWN FINDING) IS AS FOLLOWS:-

"48. NO EMPLOYER ---- AND NO PERSON ACTING ON BEHALF OF AN EMPLOYER---- SHALL PARTICIPATE IN OR INTERFERE WITH ---- THE REPRESENTATION OF EMPLOYEES BY A TRADE UNION ----, BUT NOTHING IN THIS SECTION SHALL BE DEEMED TO DEPRIVE AN EMPLOYER OF HIS FREEDOM TO EXPRESS HIS VIEWS SO LONG AS HE DOES NOT USE COERCION, INTIMIDATION, THREATS, PROMISES OR UNDUE INFLUENCE."

8. THE FACTS IN THIS CASE ARE UNCOMPLICATED. IN SEPTEMBER OF 1968, THE APPLICANT WAS CERTIFIED BY THIS BOARD AS THE BARGAINING AGENT FOR CERTAIN OF THE EMPLOYEES OF THE RESPONDENT. BARGAINING TOOK PLACE BETWEEN THE PARTIES BOTH INDIVIDUALLY AND WITH THE ASSISTANCE OF A CONCILIATION OFFICER. MOST ISSUES BETWEEN THE PARTIES WERE RESOLVED ALTHOUGH THERE STILL REMAINED TWO OR THREE ISSUES OUTSTANDING AND UNRESOLVED. ON JANUARY 24TH, 1969 THE MINISTER OF LABOUR ADVISED THE PARTIES OF HIS DECISION NOT TO APPOINT A BOARD OF CONCILIATION.

9. ON FEBRUARY 5TH AND 6TH, W. J. MOSS, REFERRED TO IN EVIDENCE AS THE PRESIDENT OF THE COMPANY, BUT A GENTLEMAN WHO HAD NOT BEEN AT THE PLANT DURING THE EARLIER NEGOTIATIONS AND WAS ONLY RECENTLY UPON THE SCENE, SPOKE TO THE EMPLOYEES DURING WORKING HOURS. HE READ HIS SPEECH FROM A PREPARED TEXT. HE TOLD THE EMPLOYEES THAT HE UNDERSTOOD THAT THEY WERE TO HAVE A SPECIAL UNION MEETING ON THE EVENING OF FEBRUARY 6TH. HE SAID THAT THE COMPANY WAS OBTAINING THE SERVICES OF AN EXPERIENCED SUPERVISOR TO ASSIST IN RUNNING THE PLANT. HE SAID EVERYONE WOULD BE TREATED FAIRLY AND WOULD GET A GOOD DAY'S PAY, ALTHOUGH HE REGRETTED THAT THEY HAD NOT BEEN TREATED AS FAIRLY BEFORE HE CAME TO THE PLANT. HE INDICATED THAT HE UNDERSTOOD WHY THEY HAD BROUGHT IN THE UNION AND SAID THAT HE WOULD HAVE DONE THE SAME THING IF HE WERE IN THEIR CIRCUMSTANCE. MOSS ADVISED THE EMPLOYEES OF THE OFFER WHICH THE COMPANY HAD MADE TO THE UNION AND WHICH THE LATTER HAD TURNED DOWN. HE SUGGESTED THAT THE REAL IMPASSE BETWEEN THE COMPANY AND THE UNION WAS THAT OF UNION CHECK-OFF, BUT THAT IT WAS COMPANY POLICY, BOTH AT THIS PLANT AND AT OTHERS, THAT THE EMPLOYEES HAVE THEIR RIGHT TO DECIDE INDIVIDUALLY ON THIS POINT. BECAUSE HE WAS NEW TO THIS OPERATION HE REQUESTED THEIR FORBEARANCE FROM ANY STRIKE ACTION FOR A SHORT PERIOD UNTIL THEY COULD SEE FOR THEMSELVES HOW THE

PLANT WOULD OPERATE UNDER HIS DIRECTION. MOSS SAID THAT SOMEONE HAD ASKED HIM IF THE COMPANY WOULD CLOSE THE PLANT. HE SAID: "LET ME GIVE YOU MY FIRM ASSURANCE THAT I WILL NOT CLOSE DOWN THE PLANT; NOR WILL GENESCO (THE PARENT COMPANY) CLOSE DOWN THE PLANT." HE INDICATED THAT IF THE PLANT HAD TO CLOSE DOWN, IT WOULD NOT BE BECAUSE IT WANTED TO CLOSE THE PLANT, BUT BECAUSE THE DEMANDS MADE OF IT COULD MAKE IT IMPOSSIBLE TO KEEP THE PLANT OPEN.

10. MOSS THEN ASKED THEM TO GIVE HIM A CHANCE BY GOING TO THE UNION MEETING AND VOTING AGAINST A STRIKE. HE SUGGESTED THAT IF THE UNION DID CALL A STRIKE, THEY COULD GO ON STRIKE BUT THEY DID NOT HAVE TO DO SO. HE SUGGESTED THAT THE PLANT WOULD REMAIN OPEN AND THEY COULD COME INTO WORK.

11. IT IS THESE LATTER SPEECHES ON WHICH THE APPLICANT CHARGES A CONTRAVENTION OF SECTION 48 OF THE ACT, AND ON WHICH THE MAJORITY OF THE BOARD GRANTS CONSENT TO INSTITUTE A PROSECUTION.

12. HAVING REGARD TO THE PROVISIONS OF SECTION 48 OF THE LABOUR RELATIONS ACT, I WOULD FIND NOTHING IN THE EVIDENCE WHICH WOULD SUGGEST THAT THE EMPLOYER USED ANY COERCION, INTIMIDATION, THREATS, PROMISES OR UNDUE INFLUENCE. TO FIND OTHERWISE WOULD, IN MY OPINION, DEPRIVE HIM OF HIS FREEDOM TO EXPRESS HIS VIEWS, A RIGHT WHICH IS GUARANTEED TO HIM UNDER SECTION 48.

13. I WISH TO BRIEFLY CITE SOME OF THE BOARD'S JURISPRUDENCE AS IT REFERS TO SECTION 48 OF THE ACT AND APPLICATIONS FOR CONSENT TO PROSECUTE.

14. IN COOPER-WEEKS' LIMITED CASE MAY, 1967 MONTHLY REPORTS 162, THE BOARD DEALT WITH AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION FOR AN ALLEGED VIOLATION OF SECTION 48 OF THE ACT. THE UNION LED EVIDENCE RELATING TO CERTAIN PAMPHLETS ISSUED AND SPEECHES MADE TO EMPLOYEES BY AN OFFICER OF THE COMPANY. THE PAMPHLETS WERE ISSUED TO ITS EMPLOYEES CONTAINING STATEMENTS CRITICAL OF THE UNION, BOTH AS TO ITS EFFECTIVENESS IN REPRESENTING THE EMPLOYEES AT OTHER PLANTS AND AS TO STATEMENTS MADE BY THE UNION'S BUSINESS AGENT. THE PHAMPHLETS, TO A LARGE DEGREE EMBODIED REMARKS MADE BY THE COMPANY OFFICER IN SPEECHES ADDRESSED TO AUDIENCES OF EMPLOYEES ASSEMBLED AT HIS DIRECTION DURING WORKING HOURS.

15. THE BOARD, IN DEALING WITH SECTION 48 OF THE ACT SAID:- "IT IS THE APPLICANT'S CONTENTION THAT THE STATEMENTS REFERRED TO

CONSTITUTE UNDUE INFLUENCE AND INTERFERE WITH THE SELECTION OF A TRADE UNION BY EMPLOYEES. IN OUR OPINION, THIS CONTENTION FAILS. IT IS NOT NECESSARY FOR US TO SET OUT AN ANALYSIS OF THESE STATEMENTS; IT IS SUFFICIENT TO STATE THAT THEY CANNOT BE READ AS SEEKING TO INFLUENCE EMPLOYEES EXCEPT BY THE EXPRESSION OF THE EMPLOYER'S OPINION."

16. SIMILARLY IN FORMFIT INTERNATIONAL S.A. CASE, JUNE, 1966, MONTHLY REPORT, PAGE 193, THE BOARD SAID:-

"1. THIS IS AN APPLICATION FOR CONSENT TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR AN ALLEGED VIOLATION OF SECTION 48 OF THE LABOUR RELATIONS ACT.

2. THE EVIDENCE ESTABLISHES THAT ON OR ABOUT MARCH 28TH, 1966, THE RESPONDENT CAUSED LETTERS TO BE DELIVERED TO CERTAIN OF ITS EMPLOYEES. THESE LETTERS DEALT WITH THE MATTER OF THE APPLICANT'S ORGANIZING CAMPAIGN AND IN THE LETTERS THE RESPONDENT ASKED ITS EMPLOYEES TO CONSIDER CAREFULLY THE QUESTION OF JOINING THE APPLICANT TRADE UNION AND SUGGESTED THAT THE INTERESTS OF EMPLOYEES WOULD BEST BE SERVED BY THEIR NOT JOINING THE TRADE UNION. THE LETTERS WERE WRITTEN IN EITHER ENGLISH OR ITALIAN ACCORDING TO THE LANGUAGE OF THE RECIPIENT. APPROXIMATELY 80 PER CENT OF THE LETTERS WERE IN ITALIAN AND THE REST WERE IN ENGLISH. THE APPLICANT LAYS PARTICULAR STRESS UPON ONE STATEMENT APPEARING IN THE ITALIAN LETTER, NAMELY, "L'UNIONE D'INTERESSATA SOLTANTO NELLA VOSTRA QUOTA ED IL LORO VANTAGGIO" WHICH MAY BE TRANSLATED AS "THE UNION IS INTERESTED ONLY IN YOUR DUES AND ITS OWN ADVANTAGE." THIS STATEMENT WAS INTENDED TO BE A TRANSLATION OF A STATEMENT "THE UNION IS INTERESTED IN DUES AND THEIR OWN SECURITY" WHICH APPEARED IN THE ENGLISH LETTER. THE TRANSLATION IS NOT CORRECT ALTHOUGH THE RESPONDENT DID TAKE REASONABLE PRECAUTIONS WITH RESPECT TO THE TRANSLATION. IN ANY EVENT, THE RESPONDENT DID PUBLISH THE LETTER IN ITALIAN CONTAINING THE STATEMENT REFERRED TO.

3. SECTION 48 OF THE LABOUR RELATIONS ACT IS AS FOLLOWS:

"NO EMPLOYER OR EMPLOYERS' ORGANIZATION AND NO PERSON ACTING ON BEHALF OF AN EMPLOYER OR AN EMPLOYERS' ORGANIZATION SHALL PARTICIPATE IN OR INTERFERE WITH THE FORMATION, SELECTION OR ADMINISTRATION OF A TRADE UNION OR THE REPRESENTATION OF EMPLOYEES BY A TRADE UNION OR CONTRIBUTE FINANCIAL OR OTHER SUPPORT TO A TRADE UNION, BUT NOTHING IN THIS SECTION SHALL BE DEEMED TO DEPRIVE AN EMPLOYER OF HIS FREEDOM TO EXPRESS HIS VIEWS SO LONG AS HE DOES NOT USE COERCION, INTIMIDATION, THREATS, PROMISES OR UNDUE INFLUENCE."

IT IS THE APPLICANT'S CONTENTION THAT HAVING REGARD PARTICULARLY TO THE STATEMENT REFERRED TO ABOVE, THE LETTER DISTRIBUTED TO THE EMPLOYEES OF THE RESPONDENT CONSTITUTES UNDUE INFLUENCE AND INTERFERES WITH THE SELECTION OF A TRADE UNION BY EMPLOYEES. IN OUR OPINION, THIS CONTENTION FAILS. NOTHING IN THE LETTER OR IN THE STATEMENT PARTICULARLY COMPLAINED OF COULD BE TAKEN AS SEEKING TO INFLUENCE EMPLOYEES EXCEPT BY THE EXPRESSION OF THE EMPLOYER'S OPINION. IT COULD NOT BE TAKEN THAT THE EMPLOYER'S JOBS, WAGES OR WORKING CONDITIONS WERE IN ANY WAY IN JEOPARDY. INDEED, COUNSEL FOR THE APPLICANT ADMITTED THERE WAS NO ELEMENT OF COERCION, INTIMIDATION, THREAT OR PROMISE IN THE ACTION OF THE RESPONDENT. HAVING REGARD TO THE PARTICULAR STATEMENT AND TO ITS CONTEXT, IT IS OUR VIEW THAT THE ACTION OF THE RESPONDENT EMPLOYER CONSTITUTED AN EXPRESSION OF ITS VIEWS WITHIN THE MEANING OF THE PROVISO TO SECTION 48.

4. THE APPLICATION IS ACCORDINGLY DISMISSED."

17. IN TAMBLYN-PRITCHARD CONSTRUCTION LTD. CASE JUNE 1967 MONTHLY REPORTS, PAGE 282, THE BOARD DEALT WITH SECTION 48 OF THE ACT. IN THAT CASE THE VICE PRESIDENT AND GENERAL MANAGER ADDRESSED A MEETING OF EMPLOYEES WITH RESPECT TO A UNION ORGANIZING CAMPAIGN, WHICH HE UNDERSTOOD TO BE TAKING PLACE. HE ADVISED THE EMPLOYEES THAT WHETHER OR NOT THEY JOINED THE UNION WAS A MATTER OF THEIR OWN CHOOSING. HE ADVISED THEM HOWEVER, THAT IT WOULD NOT BE ECONOMICAL FOR THE COMPANY TO REMAIN IN BUSINESS IF IT WERE NECESSARY TO PAY UNION RATES. THE BOARD, IN DISMISSING THE UNION'S APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION FOR AN ALLEGED CONTRAVENTION OF SECTION 48 OF THE ACT SAID:- "THE ONLY QUESTION ARISING IN THIS APPLICATION IS WHETHER THE EXPRESSION OF MR. JOHNSTON'S VIEWS ON THE OCCASION IN QUESTION COULD BE SAID TO INVOLVE THE USE OF "COERCION, INTIMIDATION, THREATS, PROMISES OR UNDUE INFLUENCE."

18. SIMILARLY, IN THE INSTANT CASE, THE ONLY QUESTION ARISING IN THIS APPLICATION IS WHETHER THE STATEMENTS MADE BY MOSS TO HIS EMPLOYEES COULD BE SAID TO INVOLVE THE USE OF "COERCION, INTIMIDATION, THREATS, PROMISES OR UNDUE INFLUENCE." IN MY OPINION, THERE IS NOT A SCINTILLA OF EVIDENCE THAT ANY OF THESE INGREDIENTS EXIST. APPARENTLY, HOWEVER, MY COLLEAGUES ARE OF THE OPINION THAT A PRIMA FACIE CASE HAS BEEN ESTABLISHED FROM SUCH STATEMENTS.

19. INDEED, I FIND IT INTERESTING TO NOTE THAT MY COLLEAGUES HAVE DISMISSED THE UNION'S APPLICATION AS IT PERTAINS TO SECTIONS 50(C) AND 52 OF THE LABOUR RELATIONS ACT, AS WELL AS SECTIONS 12 AND 53.

SECTION 52 STATES:-

"NO PERSON, TRADE UNION OR EMPLOYER'S ORGANIZATION SHALL SEEK BY INTIMIDATION OR COERCION TO COMPEL ANY PERSON TO BECOME OR REFRAIN FROM BECOMING OR TO CONTINUE TO BE OR TO CEASE TO BE A MEMBER OF A TRADE UNION OR AN EMPLOYER'S ORGANIZATION OR TO REFRAIN FROM EXERCISING ANY RIGHTS UNDER THIS ACT OR FROM PERFORMING ANY OBLIGATIONS UNDER THIS ACT."

20. MY COLLEAGUES, HAVING DISMISSED THE APPLICATION FOR CONSENT TO PROSECUTE FOR AN ALLEGED VIOLATION OF SECTION 52, AND FINDING INFERENTIALLY THEREFORE, THAT IN THE SPEECHES OF MOSS THERE WAS NO COERCION OR INTIMIDATION, IT FOLLOWS THAT IN GRANTING CONSENT TO PROSECUTE FOR AN ALLEGED CONTRAVENTION OF SECTION 48, THAT THEY FEEL THERE WAS A PRIMA FACIE CASE OF "THREATS, PROMISES OR UNDUE INFLUENCE."

21. HOWEVER, SEE SECTION 50(C).

SECTION 50(C) STATES:-

"NO EMPLOYER, EMPLOYER'S ORGANIZATION OR PERSON ACTING ON BEHALF OF AN EMPLOYER OR AN EMPLOYER'S ORGANIZATION,
(c) SHALL SEEK BY THREAT OF DISMISSAL, OR BY ANY OTHER KIND OF THREAT, OR BY THE IMPOSITION OF A PECUNIARY OR OTHER PENALTY, OR BY ANY OTHER MEANS TO COMPEL AN EMPLOYEE TO BECOME OR REFRAIN FROM BECOMING OR TO CONTINUE TO BE OR TO CEASE TO BE A MEMBER OR OFFICER OR REPRESENTATIVE OF A TRADE UNION OR TO CEASE TO EXERCISE ANY OTHER RIGHTS UNDER THIS ACT." (THE UNDER LINING IS MINE).

22. REPRESENTATION BY A TRADE UNION, BEING A RIGHT UNDER THE LABOUR RELATIONS ACT, HOW DO MY COLLEAGUES JUSTIFY FINDING THAT THERE IS A PRIMA FACIE CASE UNDER SECTION 48 WHILE AT THE SAME TIME THEY SAY THAT THERE IS NOT A PRIMA FACIE CASE THAT THE EMPLOYER SOUGHT BY THREATS, PENALTY, OR "ANY OTHER MEANS" TO COMPEL AN EMPLOYEE TO CEASE TO EXERCISE ANY OTHER OF THE RIGHTS UNDER THE ACT?

23. FINALLY, MAY I SAY THAT I CAN COME TO ONLY ONE CONCLUSION. IT IS THAT A CASE HAS NOT BEEN MADE OUT FOR THE GRANTING OF CONSENT TO THE INSTITUTION OF A PROSECUTION.

24. I WOULD, ACCORDINGLY, DISMISS THE APPLICATION.

15829-68-U: FRASER-BRACE ENGINEERING COMPANY LIMITED (APPLICANT) v.

TONY LAGACE	ADELARD BOIVIN	JOSEPH LEBEL
OVIDE BOUCHER	ROBERT V. MARTEL	RAYMOND LEBLANC
GERARD BENARD	EMARD CYR	ROLAND COTE
ARNOLD TAYLOR	LIONEL ROY	GEORGE GALIGEAU
KALLE KANERVA	MERVYN McDONALD	LORENZO BLAIS
JOSEPH RESTOULE	NELSON SCHRYER	DOUGLAS PATRY
CAMILLE J. OUELLET	THOMAS A. KELLY	WILFRED ROBERGE
ALLEN PROULX	HECTOR THERRIEN	LAWRENCE CHUSROSKIE
GLEN J. SKELLITER	MORRIS MENZIES	RENE LAGACE
RONALD JOHNSON	DONALD LLOYD	NORMAND GAREAU
KALLE LAINE	MAURICE DOUCETTE	ARMAND AUBREY
MARCEL LEMYRE	JEAN PAUL MARCOTTE	ROBERT MAJOR
ANDRE LEMYRE (RESPONDENTS).		

BEFORE: J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
F.W. MURRAY AND P.J. O'KEEFFE.

APPEARANCES AT THE HEARING: A.J. CLARK AND D.H. STEVENS FOR THE APPLICANT, P.E. GUERTIN AND JOHN DUNLOP FOR THE RESPONDENTS.

DECISION OF THE BOARD: APRIL 17, 1969.

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION OF THE RESPONDENTS FOR AN OFFENCE UNDER THE LABOUR RELATIONS ACT. THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENTS --

TONY LAGACE	ADELARD BOIVIN	JOSEPH LEBEL
OVIDE BOUCHER	ROBERT V. MARTEL	RAYMOND LEBLANC
GERARD BENARD	EMARD CYR	ROLAND COTE
ARNOLD TAYLOR	LIONEL ROY	GEORGE GALIPEAU

KALLE KANERVA	MERVYNE McDONALD	LORENZO BLAIS
JOSEPH RESTOULE	NELSON SCHRYER	DOUGLAS PATRY
CAMILL J. OUELLET	THOMAS A. KELLY	WILFRED ROBERGE
ALLEN PROULX	HECTOR THERRIEN	LAWRENCE CHUSROSKIE
GLEN J. SKELLITER	MORRIS MENZIES	RENE LAGACE
RONALD JOHNSON	DONALD LLOYD	NORMAND GAREAU
KALLE LAINE	MAURICE DOUCETTE	ARMAND AUBREY
MARCEL LEMYRE	JEAN PAUL MARCOTTE	ROBERT MAJOR
ANDRE LEMYRE		

FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED:

- (a) THAT THE SAID RESPONDENTS DID CONTRAVENE SECTION 54 OF THE LABOUR RELATIONS ACT IN THAT BETWEEN FEBRUARY 28TH, 1969 AND MARCH 4TH, 1969, EACH OF THE SAID RESPONDENTS DID ENGAGE IN A STRIKE AT THE APPLICANT'S FALCONBRIDGE NICKEL MINE IRON ORE CONCENTRATOR PROJECT AT FALCONBRIDGE DURING A TIME WHEN A COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486, WAS IN OPERATION WHICH WAS BINDING UPON THEM.
- (b) THAT THE SAID RESPONDENTS DID CONTRAVENE SECTION 54 OF THE LABOUR RELATIONS ACT IN THAT BETWEEN MARCH 10TH, 1969 AND MARCH 17TH, 1969, EACH OF THE SAID RESPONDENTS DID ENGAGE IN A STRIKE AT THE APPLICANT'S FALCONBRIDGE NICKEL MINE IRON ORE CONCENTRATOR PROJECT AT FALCONBRIDGE DURING A TIME WHEN A COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486, WAS IN OPERATION WHICH WAS BINDING UPON THEM.

2. THE APPROPRIATE DOCUMENTS WILL ISSUE.

15946-68-U: HCAR TRANSPORT COMPANY LIMITED (APPLICANT) v. S. MATKIN (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: B.H. STEWART, C.G. RIGGS, J.J. CORRIGAN FOR THE APPLICANT; PAMELA A. THOMSON, GARY WALKER FOR THE RESPONDENT.

DECISION OF C.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBER
R.W. TEAGLE: APRIL 30, 1969.

1. THIS IS AN APPLICATION FOR CONSENT TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE OFFENCES ALLEGED TO HAVE BEEN COMMITTED UNDER SECTIONS 54(1) AND 55 OF THE LABOUR RELATIONS ACT.

2. THERE IS NO EVIDENCE THAT THE RESPONDENT IS AN OFFICER OF A TRADE UNION AND ACCORDINGLY THE APPLICATION IN SO FAR AS IT RELATES TO THE RESPONDENT BEING AN OFFICER OF THE TRADE UNION IS DISMISSED.

3. HAVING REGARD TO THE REMAINING EVIDENCE, THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:

(A) THAT THE RESPONDENT DID CONTRAVENE S. 54(1) OF THE LABOUR RELATIONS ACT IN THAT ON OR ABOUT THE 11TH DAY OF MARCH 1969 THE RESPONDENT, BEING AN EMPLOYEE BOUND BY A COLLECTIVE AGREEMENT IN OPERATION DID STRIKE;

(B) THAT THE RESPONDENT DID CONTRAVENE S. 55 OF THE LABOUR RELATIONS ACT IN THAT ON OR ABOUT THE 11TH DAY OF MARCH 1969 THE RESPONDENT, BEING AN OFFICIAL OR AGENT OF A TRADE UNION, SUPPORTED OR ENCOURAGED AN UNLAWFUL STRIKE.

4. THE APPROPRIATE DOCUMENTS WILL ISSUE.

DISSENT OF BOARD MEMBER E. BOYER: APRIL 30, 1969.

IN VIEW OF THE SHORT DURATION OF THE ALLEGED STRIKE, THE LACK OF HISTORY OF SUCH OCCURRENCE, THE ABSENCE OF VIOLENCE AND THE FACT THAT THERE IS A GRIEVANCE PROCEDURE IN THE COLLECTIVE AGREEMENT, I AM OF THE VIEW THAT NO USEFUL PURPOSE WOULD BE SERVED IN GRANTING CONSENT TO INSTITUTE A PROSECUTION OF THE RESPONDENT. SEE CANAL CARTAGE LIMITED V. JOHN MELBOURNE, ET AL 1961 OCT. OLRB MTHLY. REP. 251.

15947-68-U: HOAR TRANSPORT COMPANY LIMITED (APPLICANT) V. RHEAL CORRIEVEAU (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: B.H. STEWART, C.G. RIGGS, J.J. CORRIGAN FOR THE APPLICANT; PAMELA A. THOMSON, GARY WALKER FOR THE RESPONDENT.

DECISION OF O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBER R.W. TEAGLE: APRIL 30, 1969.

1. THIS IS AN APPLICATION FOR CONSENT TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE OFFENCES ALLEGED TO HAVE BEEN COMMITTED UNDER SECTIONS 54(1) AND 55 OF THE LABOUR RELATIONS ACT.

2. THERE IS NO EVIDENCE THAT THE RESPONDENT IS AN OFFICER OF A TRADE UNION AND ACCORDINGLY THE APPLICATION IN SO FAR AS IT RELATES TO THE RESPONDENT BEING AN OFFICER OF THE TRADE UNION IS DISMISSED.

3. HAVING REGARD TO THE REMAINING EVIDENCE, THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:

(A) THAT THE RESPONDENT DID CONTRAVENE S. 54(1) OF THE LABOUR RELATIONS ACT IN THAT ON OR ABOUT THE 11TH DAY OF MARCH 1969 THE RESPONDENT, BEING AN EMPLOYEE BOUND BY A COLLECTIVE AGREEMENT IN OPERATION DID STRIKE;

(B) THAT THE RESPONDENT DID CONTRAVENE S. 55 OF THE LABOUR RELATIONS ACT IN THAT ON OR ABOUT THE 11TH DAY OF MARCH 1969 THE RESPONDENT, BEING AN OFFICIAL OR AGENT OF A TRADE UNION, SUPPORTED OR ENCOURAGED AN UNLAWFUL STRIKE.

4. THE APPROPRIATE DOCUMENTS WILL ISSUE.

DISSENT OF BOARD MEMBER E. BOYER: APRIL 30, 1969.

IN VIEW OF THE SHORT DURATION OF THE ALLEGED STRIKE, THE LACK OF HISTORY OF SUCH OCCURRENCE, THE ABSENCE OF VIOLENCE AND THE FACT THAT THERE IS A GRIEVANCE PROCEDURE IN THE COLLECTIVE AGREEMENT, I AM OF THE VIEW THAT NO USEFUL PURPOSE WOULD BE SERVED IN GRANTING CONSENT TO INSTITUTE A PROSECUTION OF THE RESPONDENT. SEE CANAL CARTAGE LIMITED V. JOHN MELBOURNE, ET AL 1961 OCT. OLRB MTHLY. REP. 251.

15948-68-U: HOAR TRANSPORT COMPANY LIMITED (APPLICANT) v. NELSON DUMAS (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: B.H. STEWART, C.G. RIGGS, J.J. CORRIGAN FOR THE APPLICANT; PAMELA THOMSON, GARY WALKER FOR THE RESPONDENT.

DECISION OF THE BOARD: APRIL 28, 1969.

1. THIS IS AN APPLICATION FOR CONSENT TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE ALLEGED VIOLATIONS OF S. 55 AND 2. 60(1) OF THE LABOUR RELATIONS ACT.

2. HAVING REGARD TO THE EVIDENCE THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:

- (A) THAT THE RESPONDENT DID CONTRAVENE S. 55 OF THE LABOUR RELATIONS ACT IN THAT ON OR ABOUT THE 11TH DAY OF MARCH 1969 THE RESPONDENT BEING AN OFFICER, OFFICIAL OR AGENT OF A TRADE UNION COUNSELLLED AN UNLAWFUL STRIKE;
- (B) THAT THE RESPONDENT DID CONTRAVENE S. 57(1) OF THE LABOUR RELATIONS ACT ON OR ABOUT MARCH 11TH 1969 BY DOING AN ACT WHICH HE KNEW OR OUGHT TO HAVE KNOWN THAT AS A PROBABLE AND REASONABLE CONSEQUENCE OF THE ACT ANOTHER PERSON OR PERSONS WOULD ENGAGED IN AN UNLAWFUL STRIKE.

3. THE APPROPRIATE DOCUMENTS WILL ISSUE.

15949-68-U: STAR TRANSFER LIMITED (APPLICANT) v. NELSON DUMAS (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: B.H. STEWART, C.G. RIGGS FOR THE APPLICANT; PAMELA D. THOMSON FOR THE RESPONDENT

DECISION OF THE BOARD: APRIL 28, 1969.

1. THIS IS AN APPLICATION FOR CONSENT TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE ALLEGED VIOLATIONS OF S. 55 AND S. 60(1) OF THE LABOUR RELATIONS ACT.

2. HAVING REGARD TO THE EVIDENCE THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:

(A) THAT THE RESPONDENT DID CONTRAVENE S. 55 OF THE LABOUR RELATIONS ACT IN THAT ON OR ABOUT THE 11TH DAY OF MARCH 1969 THE RESPONDENT BEING AN OFFICER, OFFICIAL OR AGENT OF A TRADE UNION COUNSELLLED AN UNLAWFUL STRIKE;

(B) THAT THE RESPONDENT DID CONTRAVENE S. 57(1) OF THE LABOUR RELATIONS ACT ON OR ABOUT MARCH 11TH 1969 BY DOING AN ACT WHICH HE KNEW OR OUGHT TO HAVE KNOWN THAT AS A PROBABLE AND REASONABLE CONSEQUENCE OF THE ACT ANOTHER PERSON OR PERSONS WOULD ENGAGE IN AN UNLAWFUL STRIKE.

3. THE APPROPRIATE DOCUMENTS WILL ISSUE.

15950-68-U: STAR TRANSFER LIMITED (APPLICANT) v. JACQUES PICHERETTE (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: B.H. STEWART, C.G. RIGGS FOR THE APPLICANT; PAMELA A. THOMSON FOR THE RESPONDENT.

DECISION OF B.A. SHIME AND R.W. TEAGLE: APRIL 30, 1969.

1. THIS IS AN APPLICATION FOR CONSENT TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE OFFENCES ALLEGED TO HAVE BEEN COMMITTED UNDER SECTIONS 54(1) AND 55 OF THE LABOUR RELATIONS ACT.

2. THERE IS NO EVIDENCE THAT THE RESPONDENT IS AN OFFICER OF A TRADE UNION AND ACCORDINGLY THE APPLICATION IN SO FAR AS IT RELATES TO THE RESPONDENT BEING AN OFFICER OF THE TRADE UNION IS DISMISSED.

3. HAVING REGARD TO THE REMAINING EVIDENCE, THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:

- (A) THAT THE RESPONDENT DID CONTRAVENE S. 54(1) OF THE LABOUR RELATIONS ACT IN THAT ON OR ABOUT THE 11TH DAY OF MARCH 1969, THE RESPONDENT BEING AN EMPLOYEE BOUND BY A COLLECTIVE AGREEMENT IN OPERATION DID STRIKE;
- (B) THAT THE RESPONDENT DID CONTRAVENE S. 55 OF THE LABOUR RELATIONS ACT IN THAT ON OR ABOUT THE 11TH DAY OF MARCH 1969 THE RESPONDENT, BEING AN OFFICIAL OR AGENT OF A TRADE UNION, SUPPORTED OR ENCOURAGED AN UNLAWFUL STRIKE.

4. THE APPROPRIATE DOCUMENTS WILL ISSUE.

DISSENT OF BOARD MEMBER E. BOYER: APRIL 30, 1969.

IN VIEW OF THE SHORT DURATION OF THE ALLEGED STRIKE, THE LACK OF HISTORY OF SUCH OCCURRENCE, THE ABSENCE OF VIOLENCE AND THE FACT THAT THERE IS A GRIEVANCE PROCEDURE IN THE COLLECTIVE AGREEMENT, I AM OF THE VIEW THAT NO USEFUL PURPOSE WOULD BE SERVED IN GRANTING CONSENT TO INSTITUTE A PROSECUTION OF THE RESPONDENT. SEE CANAL CARTAGE LIMITED V. JOHN MELBOURNE, ET AL 1961 Oct. OLRB MTHLY. REP. 251.

15952-68-U: STAR TRANSFER LIMITED (APPLICANT) V. ROBERT SANTERRE (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: B.H. STEWART, C.G. RIGGS, FOR THE APPLICANT; PAMELA A. THOMSON FOR THE RESPONDENT.

DECISION OF O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBER R.W. TEAGLE: APRIL 30, 1969.

1. THIS IS AN APPLICATION FOR CONSENT TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE OFFENCES ALLEGED TO HAVE BEEN COMMITTED UNDER SECTIONS 54(1) AND 55 OF THE LABOUR RELATIONS AC

2. THERE IS NO EVIDENCE THAT THE RESPONDENT IS AN OFFICER OF TRADE UNION AND ACCORDINGLY THE APPLICATION IN SO FAR AS IT RELATES THE RESPONDENT BEING AN OFFICER OF THE TRADE UNION IS DISMISSED.

3. HAVING REGARD TO THE REMAINING EVIDENCE, THE BOARD CONSENT TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:

- (A) THAT THE RESPONDENT DID CONTRAVENE S. 54(1) OF THE LABOUR RELATIONS ACT IN THAT ON OR ABOUT THE 11TH DAY OF MARCH 1969 THE RESPONDENT, BEING AN EMPLOYEE BOUND BY A COLLECTIVE AGREEMENT IN OPERATION DID STRIKE;
- (B) THAT THE RESPONDENT DID CONTRAVENE S. 55 OF THE LABOUR RELATIONS ACT IN THAT ON OR ABOUT THE 11TH DAY OF MARCH 1969 THE RESPONDENT, BEING AN OFFICIAL OR AGENT OF A TRADE UNION, SUPPORTED OR ENCOURAGED AN UNLAWFUL STRIKE.

4. THE APPROPRIATE DOCUMENTS WILL ISSUE.

DECISION OF BOARD MEMBER E. BOYER: APRIL 30, 1969.

IN VIEW OF THE SHORT DURATION OF THE ALLEGED STRIKE, THE LACK OF HISTORY OF SUCH OCCURRENCE, THE ABSENCE OF VIOLENCE AND THE FACT THAT THERE IS A GRIEVANCE PROCEDURE IN THE COLLECTIVE AGREEMENT, I AM OF THE VIEW THAT NO USEFUL PURPOSE WOULD BE SERVED IN GRANTING CONSENT TO INSTITUTE A PROSECUTION OF THE RESPONDENT. SEE CANAL CARTAGE LIMITED V. JOHN MELBOURNE, ET AL 1961 OCT. OLRB MTHLY. REP 251.

INDEXED ENDORSEMENT - SECTION 39(3)

15706-68-R: INTERNATIONAL UNION, UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, AFFILIATED WITH THE AFL-CIO AND THE CLC, AND ITS LOCALS 168 AND 719, AND STANDARD PRODUCTS (CANADA) LIMITED (JOINT APPLICANTS) v. CANADIAN RUBBER WORKERS UNION 154 (INTERVENER).

BEFORE: O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS P.J. O'KEEFFE, AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: E.B. JOLLIFFE, Q.C., LEN BRUDER, FRED MOSER AND JACK HUNTER FOR THE APPLICANT UNION; JOHN McKEON, JOHN McNALLY FOR THE APPLICANT COMPANY; LEON JOSEPH LABONTE FOR THE INTERVENER.

DECISION OF O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBER P.J. O'KEEFFE: APRIL 9, 1969.

1. THIS IS A JOINT APPLICATION FOR EARLY TERMINATION OF A COLLECTIVE AGREEMENT. THE APPLICANTS ON SEPTEMBER 29TH 1967, HAD ENTERED INTO A COLLECTIVE AGREEMENT TO BE IN EFFECT UNTIL THE 31ST DAY OF JANUARY 1970. THE APPLICANTS, HOWEVER, IN 1968 COMMENCED NEGOTIATIONS WHICH CULMINATED IN THE SIGNING OF A NEW COLLECTIVE AGREEMENT TO COMMENCE MARCH 3RD 1969 AND TO BE IN EFFECT UNTIL THE 31ST DAY OF JANUARY 1972. THE "NEW" AGREEMENT MAKES PROVISION FOR THIS APPLICATION TO THE BOARD AND CONTAINS CERTAIN PROVISIONAL CLAUSES DEPENDENT ON THE DECISION OF THE BOARD.

2. THE INTERVENER OBJECTS TO THE APPLICATION ON THE BASIS THAT THE BOARD'S CONSENT, IF GRANTED AND THE NEW AGREEMENT EFFECTIVELY FORECLOSE THE RIGHTS OF THE EMPLOYEES TO MAKE APPLICATION TO THE BOARD FOR A DECLARATION THAT THE APPLICANT TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT, AND IN ADDITION EFFECTIVELY FORECLOSE THE RIGHT OF OTHER TRADE UNIONS TO MAKE APPLICATION FOR CERTIFICATION AS BARGAINING AGENT FOR THESE EMPLOYEES. SUCH APPLICATIONS COULD BE MADE DURING THE RELEVANT PERIODS DESCRIBED UNDER SECTION 5 AND SECTION 43 OF THE LABOUR RELATIONS ACT, WHICH PERIODS ARE OFTEN REFERRED TO AS THE "OPEN SEASON".

3. A SIMILAR SITUATION AROSE IN CANADIAN BUSINESS MACHINES WORKERS' UNION AND THE NATIONAL CASH REGISTER COMPANY OF CANADA LIMITED, AND INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) BOARD FILE No. 12682-66-M APRIL 12, 1967. A MAJORITY OF THE BOARD IN THAT CASE SAID:

"IN OUR VIEW, IT IS OF VITAL IMPORTANCE THAT AN OPEN SEASON BE PRESERVED AT LEAST WHERE ANY PERSON OR ORGANIZATION HAVING AN INTEREST TAKES OBJECTION TO ITS FORECLOSURE. IT HAS NOT BEEN THE BOARD'S PRACTICE, IN RECENT YEARS TO PRESERVE THE OPEN SEASON WHERE NO OBJECTION HAS BEEN TAKEN TO A JOINT APPLICATION OF THIS SORT. THUS, IN A JOINT APPLICATION BY THE INSTANT EMPLOYER AND THE CANADIAN OFFICE EMPLOYEES UNION NO. 159 N.C. C.L., BOARD FILE NO. 12757-66-M, THE BOARD ON APRIL 12TH, 1967, GRANTED CONSENT TO THE TERMINATION EFFECTIVE JANUARY 1ST, 1967 OF A COLLECTIVE AGREEMENT IN EFFECT BETWEEN THOSE PARTIES. WHERE THERE IS OBJECTION, TAKEN, HOWEVER, IT IS OUR VIEW THAT FORECLOSURE OF THE OPEN SEASON WOULD CONSTITUTE A DENIAL OF THE RIGHTS OF EMPLOYEES UNDER THE LABOUR RELATIONS ACT."

4. HAVING REGARD TO THE REPRESENTATION OF THE PARTIES, WE SEE NO REASON IN THE INSTANT APPLICATION TO DEPART FROM THE REASONS AND DECISION IN THE NATIONAL CASH REGISTER COMPANY OF CANADA LIMITED CASE AND, ACCORDINGLY, THE BOARD CONSENTS TO THE EARLY TERMINATION OF THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANTS AS FOLLOWS:

1. A MASTER AGREEMENT DATED THE 29TH DAY OF SEPTEMBER 1967 COVERING THE EMPLOYEES AT PLANT 3 OF THE COMPANY AT STRATFORD, ONTARIO, (LOCAL 168) AND THE EMPLOYEES AT PLANT 4 OF THE COMPANY AT MITCHELL, ONTARIO, (LOCAL 719)
2. TWO SUBSIDIARY AGREEMENTS DATED THE 31ST DAY OF JANUARY 1967, ONE COVERING THE EMPLOYEES AT THE SAID PLANT 3 (LOCAL 168) AND THE OTHER COVERING THE EMPLOYEES AT THE SAID PLANT 4 (LOCAL 719).

5. THE TERMINATION SHALL BE AS OF 8TH JUNE 1969 BEING TWO MONTHS FROM THE DATE OF THIS ENDORSEMENT. THE BOARD FURTHER DIRECTS THAT COPIES OF THIS ENDORSEMENT BE POSTED IN CONSPICUOUS PLACES ON THE PREMISES OF THE EMPLOYERS IN ACCORDANCE WITH INSTRUCTIONS TO BE ISSUED BY THE REGISTRAR.

DECISION OF BOARD MEMBER J.E.C. ROBINSON: APRIL 9, 1969.

WHILE I PREVIOUSLY REGISTERED A DISSENT ON THE FACTS OF THE NATIONAL CASH REGISTER COMPANY OF CANADA LIMITED CASE, SUPRA, I WOULD AGREE THAT THE DECISION OF MY COLLEAGUES IN THE INSTANT CASE ENUNCIATES CORRECTLY THE PRESENT POLICY OF THE BOARD IN SUCH MATTERS.

INDEXED ENDORSEMENT - SECTION 47(A)

15741-68-M: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL #956 (APPLICANT) v. TIMMINS BOARD OF EDUCATION AND THE TIMMINS HIGH SCHOOL BOARD (RESPONDENTS).

BEFORE: J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: GILLES LEBEL, W.A. ACTON AND F.L. TAYLOR FOR THE APPLICANT, NO ONE FOR THE RESPONDENTS.

DECISION OF THE BOARD: APRIL 21, 1969.

1. THIS IS AN APPLICATION FOR RELIEF UNDER SECTION 47A OF THE LABOUR RELATIONS ACT. IT APPEARED FROM THE EVIDENCE THAT PRIOR TO JANUARY 1ST, 1969, THE APPLICANT WAS THE BARGAINING AGENT FOR 16 EMPLOYEES OF THE TIMMINS HIGH SCHOOL BOARD. ON JANUARY 1ST, 1969, TIMMINS BOARD OF EDUCATION CAME INTO EXISTENCE PURSUANT TO THE PROVISIONS OF THE SECONDARY SCHOOLS AND BOARDS OF EDUCATION ACT, 1968, CHAPTER 122 STATUTES OF ONTARIO, 1968, AND CURRENTLY EMPLOYS APPROXIMATELY 38 EMPLOYEES WITH WHOM WE ARE HERE CONCERNED. SECTION 84(2)(A) OF THE SECONDARY SCHOOLS AND BOARDS OF EDUCATION ACT, 1968, PROVIDES THAT "ALL BOARDS THAT HAVE JURISDICTION WHOLLY OR PARTLY IN THE SCHOOL DIVISION ARE DISSOLVED". BY VIRTUE OF THIS SECTION, THE TIMMINS HIGH SCHOOL BOARD DISSOLVED AT THE TIME TIMMINS BOARD OF EDUCATION WAS CREATED ON JANUARY 1ST, 1969.

2. THE RESPONDENT TIMMINS BOARD OF EDUCATION IN ITS REPLY TOOK THE POSITION THAT SINCE THE COLLECTIVE AGREEMENT BETWEEN THE TIMMINS HIGH SCHOOL BOARD AND THE APPLICANT WOULD NOT TERMINATE UNTIL NOVEMBER 1ST, 1969, SUCH COLLECTIVE AGREEMENT CONTINUED IN OPERATION AND WAS BINDING UPON THE RESPONDENT TIMMINS BOARD OF EDUCATION PURSUANT TO THE PROVISIONS OF SECTION 84(2) (c), WHICH READS AS FOLLOWS:

- 84(2) UPON THE ORGANIZATION OF A DIVISIONAL BOARD OF A SCHOOL DIVISION OF A DEFINED CITY AND IN RESPECT OF DIVISIONAL BOARDS OF ALL OTHER SCHOOL DIVISIONS ON THE 1ST DAY OF JANUARY, 1969,
- (c) ALL DEBTS, CONTRACTS, AGREEMENTS AND LIABILITIES FOR WHICH SUCH BOARDS WERE LIABLE, EXCEPT EMPLOYMENT CONTRACTS WITH TEACHERS, BECOME OBLIGATIONS OF THE DIVISIONAL BOARD OR BOARDS AS PROVIDED BY THE ARBITRATORS UNDER SUBSECTIONS 3 AND 4;

3. AT THE HEARING, HOWEVER, NO ONE APPEARED ON BEHALF OF THE RESPONDENTS TO ARGUE THE POSITION TAKEN BY TIMMINS BOARD OF EDUCATION IN ITS REPLY. SINCE NO ONE APPEARED ON BEHALF OF THE RESPONDENTS TO ARGUE THE POSITION, THE BOARD IS NOT PREPARED TO ACCEPT THE RESPONDENTS' CONTENTION IN THIS REGARD. THE BOARD IS OF OPINION THAT THE PROVISIONS OF SECTION 47A APPLY.

4. SECTION 47A(10) OF THE LABOUR RELATIONS ACT READS AS FOLLOWS:

WHERE ONE OR MORE MUNICIPALITIES AS DEFINED IN THE DEPARTMENT OF MUNICIPAL AFFAIRS ACT IS ERECTED INTO ANOTHER MUNICIPALITY, OR TWO OR MORE SUCH MUNICIPALITIES ARE AMALGAMATED, UNITED OR OTHERWISE JOINED TOGETHER, OR ALL OR PART OF ONE SUCH MUNICIPALITY IS ANNEXED, ATTACHED OR ADDED TO ANOTHER SUCH MUNICIPALITY, THE EMPLOYEES OF THE MUNICIPALITIES CONCERNED ARE DEEMED TO HAVE BEEN INTERMINGLED, AND,

- (a) THE BOARD MAY EXERCISE THE LIKE POWERS AS IT MAY EXERCISE UNDER SUBSECTION 5 AND 7 WITH RESPECT TO THE SALE OF A BUSINESS UNDER THIS SECTION;
- (b) THE NEW OR ENLARGED MUNICIPALITY HAS THE LIKE RIGHTS AND OBLIGATIONS AS A PERSON TO WHOM A BUSINESS IS SOLD UNDER THIS SECTION AND WHO INTERMINGLES THE EMPLOYEES OF ONE OF HIS BUSINESSES WITH THOSE OF ANOTHER OF HIS BUSINESSES; AND
- (c) ANY TRADE UNION CONCERNED HAS THE LIKE RIGHTS AND OBLIGATIONS AS IT WOULD HAVE IN THE CASE OF THE INTERMINGLING OF EMPLOYEES IN TWO OR MORE BUSINESSES UNDER THIS SECTION.

5. AS CAN BE SEEN FROM THE PROVISIONS OF SECTION 47(A)(10) (B), THE LEGISLATURE HAS SPECIFICALLY PROVIDED THAT THE NEW OR ENLARGED MUNICIPALITY, IN THIS CASE TIMMINS BOARD OF EDUCATION, HAS THE LIKE RIGHTS AND OBLIGATIONS AS A PERSON TO WHOM A BUSINESS IS SOLD UNDER THIS SECTION AND WHO INTERMINGLES THE EMPLOYEES OF ONE OF HIS BUSINESSES WITH THOSE OF ANOTHER OF HIS BUSINESSES. SINCE SECTION 47A(10) "DEEMS" THAT THERE HAS BEEN AN INTERMINGLING OF EMPLOYEES OF THE SCHOOLS OVER WHICH TIMMINS BOARD OF EDUCATION HAS JURISDICTION, THE BOARD FINDS THAT SUCH INTERMINGLED EMPLOYEES FORM A UNIT OF EMPLOYEES THAT IS APPROPRIATE FOR COLLECTIVE BARGAINING.

6. THE BOARD THEREFORE FINDS THAT ALL EMPLOYEES OF THE RESPONDENT TIMMINS BOARD OF EDUCATION ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERINTENDENT, PERSONS ABOVE THE RANK OF SUPERINTENDENT, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT TIMMINS BOARD OF EDUCATION APPROPRIATE FOR COLLECTIVE BARGAINING.

7. SINCE THE APPLICANT WAS THE BARGAINING AGENT FOR A SUBSTANTIAL NUMBER OF THE EMPLOYEES NOW EMPLOYED BY TIMMINS BOARD OF EDUCATION, THE BOARD DEEMS IT PROPER THAT A REPRESENTATION VOTE BE TAKEN PURSUANT TO THE PROVISIONS OF SECTION 47A(7) OF THE ACT TO DETERMINE WHETHER THE APPLICANT SHALL BE THE BARGAINING AGENT FOR ALL EMPLOYEES IN THE BARGAINING UNIT DESCRIBED ABOVE.

8. THE BOARD THEREFORE DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF TIMMINS BOARD OF EDUCATION IN THE BARGAINING UNIT. ALL EMPLOYEES OF TIMMINS BOARD OF EDUCATION IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

9. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

10. THE MATTER IS REFERRED TO THE REGISTRAR.

INDEXED ENDORSEMENTS - SECTION 79A

15726-68-M: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION 749 (FORMERLY KNOWN AS THE INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA LOCAL 749) (TRADE UNION) v. DAUGULIS COMPANY LIMITED (EMPLOYER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS P.J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: PETER DHAEN AND ONORIO D'AGOSTINI FOR THE TRADE UNION, AND NO ONE APPEARING FOR THE EMPLOYER.

DECISION OF THE BOARD: APRIL 3, 1969.

1. THE MINISTER HAS REFERRED TO THE ONTARIO LABOUR RELATIONS BOARD, PURSUANT TO SECTION 79A OF THE LABOUR RELATIONS ACT, THE QUESTION AS TO WHETHER LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION 749 (FORMERLY KNOWN AS THE INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION OF AMERICA LOCAL 749) IS ENTITLED TO GIVE NOTICE OF DESIRE TO BARGAIN WITH DAUGULIS COMPANY LIMITED, PURSUANT TO THE PROVISIONS OF SECTION 40 OF THE ACT.

2. THE RELEVANT PORTIONS OF SECTION 40 OF THE LABOUR RELATIONS ACT ARE AS FOLLOWS:

"40 (1) EITHER PARTY TO A COLLECTIVE AGREEMENT MAY, WITHIN THE PERIOD OF TWO MONTHS BEFORE THE AGREEMENT CEASES TO OPERATE, GIVE NOTICE IN WRITING TO THE OTHER PARTY OF ITS DESIRE TO BARGAIN WITH A VIEW TO THE RENEWAL, WITH OR WITHOUT MODIFICATIONS, OF THE AGREEMENT THEN IN OPERATION OR TO THE MAKING OF A NEW AGREEMENT.

"(2) A NOTICE GIVEN BY A PARTY TO A COLLECTIVE AGREEMENT IN ACCORDANCE WITH PROVISIONS IN THE AGREEMENT RELATING TO THE TERMINATION OR RENEWAL SHALL BE DEEMED TO COMPLY WITH SUB-SECTION 1."

3. THE TRADE UNION AND THE EMPLOYER ENTERED INTO A COLLECTIVE AGREEMENT DATED 31ST MAY, 1965. THE AGREEMENT WAS TO BE EFFECTIVE FROM THAT DATE UNTIL JANUARY 1ST, 1967. SECTIONS 2 AND 3 OF THE AGREEMENT READ RESPECTIVELY AS FOLLOWS:

"2. TERM OF AGREEMENT.

THIS AGREEMENT WHEN SIGNED SHALL BECOME EFFECTIVE ON MAY 31/65 AND SHALL REMAIN IF FORCE AND EFFECT UNTIL JAN. 1/1967.

"3. CONDITIONS OF AMENDMENT.

SHOULD EITHER PARTY TO THIS AGREEMENT DESIRE TO CHANGE, ADD TO OR AMEND OR TERMINATE THIS AGREEMENT THAT PARTY AGREES TO GIVE THE OTHER PARTY WRITTEN NOTICE TO THAT EFFECT ON OR BEFORE THE 1ST DAY OF NOV 1966 PRIOR TO TERMINATION OF THIS AGREEMENT."

4. IT WAS ESTABLISHED IN EVIDENCE AT THE HEARING BEFORE THE BOARD THAT THE TRADE UNION ATTEMPTED TO NOTIFY THE EMPLOYER BY LETTER DATED OCTOBER 29, 1966 AND POSTED BY REGISTERED MAIL, OF ITS DESIRE TO BARGAIN "AS PER SECTION 3 UNDER THE CONDITIONS OF AMENDMENTS OF OUR CURRENT AGREEMENT WITH YOUR COMPANY AND THE LABOURER'S INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 749, CHATHAM, ONTARIO."

5. IN THE COURSE OF ITS PRESENTATION TO THE BOARD, THE UNION FILED COPIES OF TWO LETTERS ADDRESSED TO THE DEPUTY MINISTER OF LABOUR BY THE SOLITORS FOR THE COMPANY. THE SOLICITOR HAD ALSO FILED THE SAME LETTERS WITH THE BOARD. THE FIRST OF THESE LETTERS IS DATED FEBRUARY 19, 1969 AND STATES THAT THE NOTICE ABOVE REFERRED TO WAS GIVEN BY THE TRADE UNION TO THE EMPLOYER. HOWEVER, THE SECOND LETTER DATED FEBRUARY 20, 1969 ADVISED THE DEPUTY MINISTER THAT THEY

HAD BEEN ADVISED BY THEIR CLIENT THAT HE HAD NOT RECEIVED THE NOTICE OF DESIRE TO BARGAIN, SAID TO HAVE BEEN DATED ON FEBRUARY 19, 1969. THE EXPLANATION WAS THAT THEY HAD ACCEPTED A STATEMENT MADE BY THE UNION IN THE APPLICATION THAT SUCH NOTICE HAD BEEN GIVEN. THE TRADE UNION, HOWEVER, PRODUCED POST OFFICE RECEIPTS INDICATING THAT THE NOTICE HAD BEEN SENT TO THE EMPLOYER BY REGISTERED POST. THE NOTICE HAD NOT BEEN RETURNED TO THE SENDER. NO FURTHER NOTICE WAS GIVEN UNTIL JANUARY 29, 1969. THERE IS NO DISPUTE CONCERNING THE RECEIPT OF THE LATTER NOTICE WHICH WAS DATED JANUARY 29, 1969 AND PURPORTED TO BE NOTICE OF DESIRE TO BARGAIN UNDER THE TERMS OF THE COLLECTIVE AGREEMENT.

6. IF THE FIRST NOTICE WAS EFFECTIVE THEN, BY VIRTUE OF THE ABOVE RECITED PROVISIONS OF THE AGREEMENT, THE COLLECTIVE AGREEMENT CEASED TO OPERATE ON JANUARY 1ST, 1967. IF, ON THE OTHER HAND, THE FIRST NOTICE WAS NOT EFFECTIVE THE AGREEMENT, AGAIN BY VIRTUE OF SECTIONS 2 AND 3 RENEWED ITSELF FOR A FURTHER YEAR AND CEASED TO OPERATE ON JANUARY 1ST, 1968.

7. THE EVIDENCE GIVEN BY THE UNION AT THE HEARING WAS THAT THE EMPLOYER HAD CEASED OPERATIONS IN THE CHATHAM AREA AFTER THE GIVING OF THE FIRST NOTICE, AND INSOFAR AS IT WAS AWARE, HAD NOT RETURNED TO THE AREA UNTIL A FEW DAYS PRIOR TO FEBRUARY 11, 1969. THE EVIDENCE WAS THAT AS SOON AS THE UNION BECAME AWARE OF THE RETURN OF THE EMPLOYER TO THE AREA, TWO OF ITS OFFICERS CALLED UPON THE EMPLOYER AT THE WORKSITE ON FEBRUARY 11, 1969 FOR THE PURPOSE OF MAKING A COLLECTIVE AGREEMENT. THIS WAS NOT A FORMALLY ARRANGED MEETING AND NO AGREEMENT WAS REACHED.

8. THE LETTERS OF THE SOLICITORS FOR THE EMPLOYER PREVIOUSLY REFERRED TO, INDICATE THAT THE EMPLOYER TOOK THE POSITION THAT THE UNION BY ITS CONDUCT HAS ABANDONED ITS BARGAINING RIGHTS. IN OUR OPINION, THE EVIDENCE DOES NOT SUPPORT THIS POINT OF VIEW.

9. THE QUESTION DIRECTED TO THE BOARD BY THE MINISTER, HOWEVER, DOES NOT REFER TO THE MATTER OF BARGAINING RIGHTS. IT RATHER INQUIRES AS TO THE RIGHT OF THE TRADE UNION TO GIVE NOTICE OF DESIRE TO BARGAIN PURSUANT TO PROVISIONS OF SECTION 40 OF THE ACT. AS WE HAVE INDICATED THE COLLECTIVE AGREEMENT EXPIRED, AT THE LATEST, ON JANUARY 1ST, 1968. THAT BEING THE CASE, NOTICE CANNOT NOW BE GIVEN PURSUANT TO SECTION 40 OF THE ACT. IT IS EQUALLY CLEAR THAT THE NOTICE OF JANUARY 29, 1969, IS INVALID AS A NOTICE UNDER SECTION 40, ALTHOUGH IT HAS VALIDITY AS EVIDENCE OF AN ATTEMPT TO EXERCISE BARGAINING RIGHTS.

HOWEVER, INSOFAR AS THE FIRST NOTICE IS CONCERNED AND HAVING REGARD TO THE EVIDENCE OF THE UNION WITH RESPECT TO ITS DISPATCH, WE ARE OF THE OPINION THAT THE EMPLOYER HAS NOT DISPLACED THE PRESUMPTION OF THE RECEIPT OF SUCH NOTICE OF DESIRE RAISED BY THE PROVISIONS OF SECTION 85 SUBSECTION (1) OF THE ACT WHICH READS AS FOLLOWS:

"FOR THE PURPOSES OF THIS ACT AND OF ANY PROCEEDINGS TAKEN UNDER IT, ANY NOTICE OR COMMUNICATION SENT THROUGH HER MAJESTY'S MAILS SHALL BE PRESUMED, UNLESS THE CONTRARY IS PROVED, TO HAVE BEEN RECEIVED BY THE ADDRESSEE IN THE ORDINARY COURSE OF MAIL."

10. IN OUR OPINION THEREFORE, THE EVIDENCE ESTABLISHES THE RECEIPT BY THE EMPLOYER OF THE NOTICE OF DESIRE TO BARGAIN, DATED OCTOBER 29, 1966, AND THAT IT CONSTITUTED VALID NOTICE UNDER SECTION 40 OF THE ACT. WE ARE ALSO SATISFIED ON THE EVIDENCE THAT THE TRADE UNION HAS NOT ABANDONED ITS BARGAINING RIGHTS.

11. THE ANSWER TO THE PRECISE QUESTION REFERRED TO THE BOARD BY THE MINISTER IS, NEVERTHELESS, "NO".

15874-68-M: THE BUILDING AND CONSTRUCTION TRADES COUNCIL OF OTTAWA - HULL AND DISTRICT (TRADE UNION) v. V. K. MASON CONSTRUCTION LTD. (EMPLOYER).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: D.J. POWER AND J.G. DENIS FOR THE TRADE UNION, W.S. COOK AND L.J. DEBLY FOR THE EMPLOYER, F. MANONI FOR LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527.

DECISION OF THE BOARD: APRIL 28, 1969.

1. THIS IS A REFERENCE FROM THE MINISTER MADE PURSUANT TO SECTION 79A OF THE LABOUR RELATIONS ACT. THE QUESTION REFERRED TO THE BOARD IS WHETHER IN ALL THE CIRCUMSTANCES THE MINISTER HAS THE POWER UNDER THE LABOUR RELATIONS ACT TO APPOINT A CONCILIATION OFFICER.

2. THE EMPLOYER (HEREINAFTER REFERRED TO AS MASON CONSTRUCTION) ENTERED INTO COLLECTIVE AGREEMENTS WITH THE OTTAWA DISTRICT LOCAL UNIONS OF THE LABOURERS, CARPENTERS, BRICKLAYERS AND OPERATING ENGINEERS IN 1965. ALL OF THESE COLLECTIVE AGREEMENTS PROVIDE FOR A COMMON EXPIRY DATE OF APRIL 30TH, 1969. ON NOVEMBER 24TH, 1967, MASON CONSTRUCTION AND THE BUILDING AND CONSTRUCTION TRADES COUNCIL OF OTTAWA - HULL AND DISTRICT (HEREINAFTER REFERRED TO AS THE COUNCIL) EXECUTED A DOCUMENT TITLED "WORKING AGREEMENT" (HEREINAFTER

REFERRED TO AS THE AGREEMENT). ATTACHED TO THE AGREEMENT IS A SHEET SIGNED BY REPRESENTATIVES OF THE UNION LOCALS THAT ARE MEMBERS OF THE COUNCIL. IN ALL, FIFTEEN CONSTRUCTION TRADES INCLUDING THE FOUR THAT HAVE SEPARATE COLLECTIVE AGREEMENTS WITH MASON CONSTRUCTION ARE MEMBERS OF THE COUNCIL.

3. THE AGREEMENT MAKES PROVISION FOR CERTAIN TERMS AND CONDITIONS OF WORK, I.E. WORK BREAKS AND RECOGNIZED HOLIDAYS. HOURS OF WORK AND WAGE RATES, HOWEVER, ARE NOT PROVIDED FOR IN THE AGREEMENT. THE TWO ARTICLES OF THE AGREEMENT WHICH ARE MOST RELEVANT FOR OUR PURPOSES ARE ARTICLES 3 AND 5 WHICH READ:

3. IN CASES OF DISCREPANCY BETWEEN THE INDIVIDUAL COLLECTIVE AGREEMENTS, NOW IN EFFECT OR WHICH, AS A RESULT OF PARAGRAPH 5 HEREOF, COME INTO EFFECT, BETWEEN THE UNION AND THE COMPANY, AND THE HEREIN AGREEMENT, THE INDIVIDUAL COLLECTIVE AGREEMENT SHALL GOVERN.
5. THE COMPANY AGREES TO COMPLY WITH THE COLLECTIVE AGREEMENTS THAT IT HAS EXECUTED WITH THE UNIONS AFFILIATED WITH THE COUNCIL AND FURTHER AGREES TO ENTER INTO COLLECTIVE AGREEMENTS WITH THE OTHER UNIONS AFFILIATED WITH THE COUNCIL IF THE COMPANY HAS OCCASION TO EMPLOY TRADESMEN REPRESENTED BY ANY SUCH AFFILIATED LOCAL UNION(S).

4. THE AGREEMENT FURTHER PROVIDES THAT IT IS TO BE EFFECTIVE FROM YEAR TO YEAR SUBJECT TO NOTICE OF TERMINATION BY EITHER PARTY BETWEEN THIRTY AND SIXTY DAYS BEFORE THE ANNIVERSARY DATE OF THE AGREEMENT. NO NOTICE WAS GIVEN IN THE TIME PERIOD STIPULATED AT THE END OF THE FIRST YEAR AND THE AGREEMENT AUTOMATICALLY RENEWED ITSELF FOR A SECOND YEAR. BY LETTER DATED OCTOBER 25TH, 1968, MASON CONSTRUCTION SERVED NOTICE ON THE COUNCIL OF ITS DESIRE TO TERMINATE THE AGREEMENT. THE EVIDENCE IS THAT THE DISTRICT MANAGER OF MASON CONSTRUCTION AND OFFICERS OF THE COUNCIL MET ON DECEMBER 3RD, 1968 AND JANUARY 31ST, 1969. IT APPEARS, HOWEVER, THAT NO NEGOTIATIONS TOOK PLACE FOR THE RENEWAL OF THE AGREEMENT.

5. ON FEBRUARY 24TH, 1969, THE COUNCIL REQUESTED THAT THE MINISTER APPOINT A CONCILIATION OFFICER. BY LETTER DATED FEBRUARY 28TH, 1969, BOTH THE LABOURERS AND CARPENTERS LOCAL UNIONS ADVISED THE MINISTER THAT THEY WERE IN SEPARATE NEGOTIATIONS WITH MASON CONSTRUCTION FOR THE RENEWAL OF THEIR RESPECTIVE COLLECTIVE AGREEMENTS AND OBJECTED TO CONCILIATION SERVICES BEING GRANTED FOR THEIR PARTICULAR TRADES. THE COUNCIL, FOR ITS PART, WITHDREW ITS REQUEST

WITH RESPECT TO THE LABOURERS AND CARPENTERS. THE COUNCIL, HOWEVER, STILL SOUGHT CONCILIATION SERVICES FOR ALL OF THE REMAINING TRADES INCLUDING THE BRICKLAYERS AND OPERATING ENGINEERS LOCAL UNIONS.

6. THE POSITION OF MASON CONSTRUCTION IS THAT THE COUNCIL IS NOT A TRADE UNION AS DEFINED IN SECTION 1(1)(J) OF THE ACT AND ALTERNATIVELY THAT THE AGREEMENT IS NOT A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(C) OF THE ACT. COUNSEL FOR MASON CONSTRUCTION SUBMITS THAT IN THESE CIRCUMSTANCES THE COUNCIL IS NOT ENTITLED TO CONCILIATION SERVICES AND THE REQUEST ACCORDINGLY SHOULD BE DENIED.

7. WHILE "TRADE UNION" AS DEFINED IN SECTION 1(1)(J) OF THE ACT ONLY MAKES REFERENCE TO A CERTIFIED COUNCIL OF TRADE UNIONS, IT DOES NOT EXCLUDE A COUNCIL OF TRADE UNIONS THAT IS NOT CERTIFIED FROM BEING A "TRADE UNION". INDEED THE DEFINITION OF A "COLLECTIVE AGREEMENT" IN SECTION 1(1)(C) SPECIFICALLY PROVIDES THAT A COUNCIL OF TRADE UNIONS MAY BE A PARTY TO A COLLECTIVE AGREEMENT. FURTHER, SECTIONS 40(4) AND 93(1) OF THE ACT BOTH PROVIDE FOR THE GIVING OF NOTICE TO OR BY A COUNCIL OF TRADE UNIONS FOR THE RENEGOTIATION OF A COLLECTIVE AGREEMENT. WE ACCORDINGLY CANNOT ACCEPT THE SUBMISSION OF MASON CONSTRUCTION THAT THE COUNCIL IS NOT A TRADE UNION WITHIN THE MEANING OF THE ACT.

8. ARTICLE 3 OF THE AGREEMENT QUOTED ABOVE READS THAT THE PROVISIONS OF INDIVIDUAL COLLECTIVE AGREEMENTS GOVERN OVER THE AGREEMENT. STATED ANOTHER WAY, WITH REFERENCE TO THE INSTANT CASE, THE COLLECTIVE AGREEMENTS BETWEEN MASON CONSTRUCTION AND THE LABOURERS, CARPENTERS, BRICKLAYERS AND OPERATING ENGINEERS INCORPORATE THE AGREEMENT. ACCORDINGLY, WITH RESPECT TO THOSE TRADES, THE AGREEMENT IS NOT A COLLECTIVE AGREEMENT AND THE COUNCIL IS NOT ENTITLED TO THE GRANTING OF CONCILIATION SERVICES.

9. BY ARTICLE 5 OF THE AGREEMENT QUOTED ABOVE, MASON CONSTRUCTION AGREES TO ENTER INTO COLLECTIVE AGREEMENTS WITH THE OTHER UNIONS AFFILIATED WITH THE COUNCIL IF THE COMPANY HAS OCCASION TO EMPLOY TRADESMEN REPRESENTED BY SUCH AN AFFILIATED LOCAL UNION. THIS PROVISION DOES NOT FALL WITHIN THE PURVIEW OF SECTION 13(3) OF THE ACT. THAT SECTION STIPULATES THAT WITH VOLUNTARY RECOGNITION, THE RECOGNITION MUST BE FOR "A DEFINED BARGAINING UNIT". ARTICLE 5 DOES NOT MEET THIS REQUIREMENT. IN ANY EVENT, THE AGREEMENT IS NOT A COLLECTIVE AGREEMENT BETWEEN MASON CONSTRUCTION AND THE COUNCIL WITH REGARD TO THOSE TRADES WITH WHICH MASON CONSTRUCTION DOES NOT HAVE INDIVIDUAL COLLECTIVE AGREEMENTS. THE REASON IS THAT A "COLLECTIVE AGREEMENT" AS DEFINED IN SECTION 1(1)(C) OF THE ACT REQUIRES THAT A TRADE UNION OR A COUNCIL OF TRADE UNIONS "REPRESENTS EMPLOYEES OF THE EMPLOYER".

AT THE TIME THAT MASON CONSTRUCTION EXECUTED THE AGREEMENT IT HAD NO PERSONS IN ITS EMPLOY WHO WERE REPRESENTED BY ANY OF THE UNION LOCALS IN THE COUNCIL OTHER THAN THOSE WITH WHOM IT HAD INDIVIDUAL COLLECTIVE AGREEMENTS (SEE SOVEREIGN CONSTRUCTION COMPANY CASE, 60 C.L.L.C. 860). WE WOULD ADD IN REPLY TO AN ARGUMENT ADVANCED BY COUNSEL FOR THE COUNCIL THAT THE FACT THAT MASON CONSTRUCTION COMPLIED WITH THE AGREEMENT DOES NOT BY THAT FACT MAKE IT A COLLECTIVE AGREEMENT.

10. ACCORDINGLY, OUR ANSWER TO THE REFERENCE IS THAT THE MINISTER DOES NOT HAVE THE POWER UNDER THE ACT TO APPOINT A CONCILIATION OFFICER.

15906-68-M: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (TRADE UNION) v. ELGIN CONSTRUCTION CO. LIMITED (EMPLOYER).

BEFORE: J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS H.F. IRWIN AND P.J. O'KEEFFE.

APPEARANCES AT THE HEARING: H.A. HERRON FOR THE TRADE UNION, W.G. PHELPS FOR THE EMPLOYER.

DECISION OF THE BOARD: APRIL 17, 1969.

1. THE MINISTER HAS REFERRED TO THE BOARD, PURSUANT TO THE PROVISIONS OF SECTION 79A OF THE LABOUR RELATIONS ACT, THE QUESTION AS TO WHETHER OR NOT IN ALL THE CIRCUMSTANCES THE MINISTER HAS THE POWER UNDER THE ACT TO APPOINT A CONCILIATION OFFICER IN THIS MATTER.

2. THE UNION HAS TAKEN THE POSITION THAT THE COLLECTIVE AGREEMENT BETWEEN THE UNION AND THE COMPANY WHICH TERMINATED ON FEBRUARY 15TH, 1965, HAS AUTOMATICALLY RENEWED ITSELF FROM YEAR TO YEAR PURSUANT TO ITS TERMS. THE UNION FURTHER ARGUED THAT THE NOTICE TO BARGAIN SERVICED BY THE UNION WHICH IS DATED DECEMBER 24TH, 1968, WAS SERVED WITHIN THE LAST TWO MONTHS OF THE OPERATION OF THE RENEWED COLLECTIVE AGREEMENT WHICH WAS ABOUT TO TERMINATE ON FEBRUARY 15TH, 1969. IT WAS THEREFORE ARGUED BY THE UNION THAT IF THE COLLECTIVE AGREEMENT RENEWED ITSELF FROM YEAR TO YEAR, AS IT ALLEGED, THE NOTICE TO BARGAIN WAS A TIMELY NOTICE UNDER SECTION 40 OF THE ACT AND CONCILIATION SERVICES SHOULD THEREFORE BE MADE AVAILABLE.

3. THE EVIDENCE ESTABLISHED THAT PRIOR TO DECEMBER 24TH, 1968, THERE HAD BEEN NO ATTEMPT BY THE UNION TO ENFORCE OR ADVANCE ITS BARGAINING RIGHTS SINCE 1964. UNTIL DECEMBER 24TH, 1968, NO ATTEMPT WAS MADE BY THE UNION TO RENEGOTIATE THE COLLECTIVE AGREEMENT WHICH TERMINATED ON FEBRUARY 15TH, 1965. THE CHECK-OFF PROVISIONS OF THE COLLECTIVE AGREEMENT WERE NOT ENFORCED, NEW EMPLOYEES WERE NOT REQUIRED

TO JOIN THE UNION AS PROVIDED IN THE COLLECTIVE AGREEMENT AND WORKING CONDITIONS AND WAGES WERE CHANGED SEVERAL TIMES BY THE COMPANY WITHOUT THE UNION'S CONSENT AND WITHOUT PROTEST FROM THE UNION. NO GRIEVANCES WERE PROCESSED UNDER THE COLLECTIVE AGREEMENT DURING THE INTERVENING YEARS.

4. HAVING REGARD TO ALL THE EVIDENCE, THE BOARD FINDS THAT THE UNION HAS SLEPT ON ITS BARGAINING RIGHTS SINCE 1964. FOR REASONS SIMILAR TO THE REASONS OUTLINED IN THE BARRIE TANNING, LIMITED CASE, 66CLLC ¶16092, THE BOARD FINDS THAT THE UNION HAD ABANDONED ITS BARGAINING RIGHTS AND NO LONGER REPRESENTED ANY EMPLOYEES OF THE COMPANY IN THE BARGAINING UNIT FORMERLY REPRESENTED BY IT PRIOR TO THE SERVICE OF THE NOTICE TO BARGAIN DATED DECEMBER 24TH, 1968. THE BOARD THEREFORE FINDS THAT THE COLLECTIVE AGREEMENT DID NOT RENEW ITSELF FROM YEAR TO YEAR.

5. FOR THE REASONS SET OUT ABOVE, WE ARE OF OPINION THAT THE UNION IS THEREFORE NOT ENTITLED TO THE SERVICES OF A CONCILIATION OFFICER IN THIS CASE.

6. IN ANSWER TO THE QUESTION REFERRED TO THE BOARD, IT IS OUR OPINION THAT THE MINISTER DOES NOT HAVE THE POWER TO APPOINT A CONCILIATION OFFICER IN THIS MATTER SINCE THE UNION HAS ABANDONED ITS BARGAINING RIGHTS.

15984-69-M: BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA; GLAZIERS & METAL MECHANICS, LOCAL UNION 1671 (TRADE UNION) v. CANADIAN PITTSBURGH INDUSTRIES LIMITED HENDERSON GLASS (LAKEHEAD) LIMITED PILKINGTON BROTHERS (CANADA) LIMITED (EMPLOYERS).

BEFORE: G.W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: D. CAIRNS FOR THE TRADE UNION; AND F.R. VONVEH, J.A. FINLAYSON AND D. HUNTER FOR THE EMPLOYERS.

DECISION OF THE BOARD: APRIL 25, 1969.

1. THIS IS A REFERENCE TO THE BOARD BY THE MINISTER OF LABOUR PURSUANT TO SECTION 79A OF THE LABOUR RELATIONS ACT. THE QUESTION REFERRED TO THE BOARD IS WHETHER OR NOT IN ALL THE CIRCUMSTANCES OF THE PRESENT REFERENCE THE MINISTER HAS THE POWER TO APPOINT A CONCILIATION OFFICER UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT.

2. THE TRADE UNION IN THIS CASE ENTERED INTO A COLLECTIVE AGREEMENT WITH THE EMPLOYERS EFFECTIVE JUNE 1, 1966, TO REMAIN IN FORCE UNTIL MARCH 31, 1969. ON MARCH 12, 1969 THE MINISTER RECEIVED A REQUEST FROM THE TRADE UNION FOR THE APPOINTMENT OF A CONCILIATION OFFICER. THIS REQUEST WAS MADE PURSUANT TO THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT. PILKINGTON BROTHERS (CANADA) LIMITED AND CANADIAN PITTSBURGH INDUSTRIES LIMITED OBJECTED TO THE REQUEST BEING MADE ON CONSTRUCTION INDUSTRY FORMS; HENCE THE PRESENT REFERENCE TO THE BOARD.

3. UNDER THE AGREEMENT IN QUESTION THE THREE EMPLOYERS RECOGNIZE THE TRADE UNION "AS THE SOLE COLLECTIVE BARGAINING AGENCY FOR ALL EMPLOYEES AT PORT ARTHUR AND/OR FORT WILLIAM PLANT" WITH CERTAIN EXCEPTIONS NOT HERE MATERIAL. IT IS CLEAR FROM THE SCOPE CLAUSE DEALING WITH WORK NORMALLY PERFORMED BY GLASSWORKERS (ARTICLE III), THE WAGES AND CLASSIFICATIONS CLAUSE (ARTICLE XVI) AND APPENDIX "A", DEALING WITH PLANT RULES, THAT THE AGREEMENT WAS INTENDED TO APPLY TO EMPLOYEES ENGAGED "IN THE PLANT" WHATEVER THAT TERM MAY EMBRACE, BE IT A WAREHOUSE OR A SHOP, AS WELL AS TO PERSONS ENGAGED IN "OUTSIDE" INSTALLATION WORK - THAT IS, WORK OFF THE "PLANT" PREMISES.

4. AT THE HEARING THE PARTIES WERE IN DISAGREEMENT AS TO THE NATURE OF THE WORK BEING PERFORMED BY VARIOUS EMPLOYEES AND AS TO THE NUMBER OF EMPLOYEES ENGAGED IN THE VARIOUS TYPES OF WORK BEING DONE. THE TRADE UNION CONTENDED THAT 90 PER CENT OF THE WORK WAS ON CONSTRUCTION JOB SITES BUT CONCEDED THAT THERE WERE EMPLOYEES WHO WORKED IN THE PLANT AND THAT THIS WORK WOULD ACCOUNT FOR ABOUT 10 PER CENT OF THE TOTAL WORK PERFORMED BY THE EMPLOYEES IN QUESTION. WE INDICATED TO THE PARTIES AT THE HEARING THAT WE WERE PREPARED TO DEAL WITH THE APPLICATION ON THE BASIS OF THE TRADE UNION'S SUBMISSIONS WITHOUT DECIDING WHICH SET OF FACTS REPRESENTED THE TRUE PICTURE.

5. IN DEALING WITH CERTIFICATION APPLICATIONS UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT, THE BOARD HAS BEEN FACED ON A NUMBER OF OCCASIONS WITH A SIMILAR PROBLEM. HAVING REGARD TO THE "ON SITE" REQUIREMENTS CONTAINED IN THE DEFINITION OF "CONSTRUCTION INDUSTRY" IN SECTION 1(1)(DA) OF THE ACT, THE BOARD HAS CONSISTENTLY TAKEN THE POSITION THAT A TRADE UNION IS NOT ENTITLED TO APPLY UNDER SECTION 92 FOR CERTIFICATION AS BARGAINING AGENT FOR A GROUP OF EMPLOYEES ENGAGED IN BOTH SHOP OR YARD OPERATIONS AND ON SITE WORK. SEE, FOR EXAMPLE, CARL J. LEHMAN & SONS LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1967, p. 615 AT p. 616; WILLIAM FINKLE MACHINE LIMITED CASE, O.L.R.B. MONTHLY REPORT, DECEMBER 1968, p. 911; BERGMAN & NELSON LIMITED CASE, O.L.R.B. MONTHLY REPORT, NOVEMBER 1966, p. 594.

IN DEALING WITH SUCH CASES THE BOARD HAS NOT LOOKED AT PERCENTAGES. IT HAS TAKEN THE POSITION THAT WHERE BOTH TYPES OF EMPLOYEES ARE SOUGHT TO BE INCLUDED IN THE BARGAINING UNIT THE APPLICATION MUST BE DEALT WITH AS ONE OUTSIDE OF THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT. IT IS OUR VIEW THAT REQUESTS FOR CONCILIATION ARISING FROM THE RE-NEGOTIATION OF COLLECTIVE AGREEMENTS EMBRACING BOTH TYPES OF EMPLOYEES MUST ALSO BE CONSIDERED AS FALLING OUTSIDE THE CONSTRUCTION INDUSTRY PROVISIONS. WHILE WE RECOGNIZE THAT THIS MAY CAUSE SOME DIFFICULTIES, PARTICULARLY WHERE THERE IS A BARGAINING HISTORY WHICH PRECEDES THE COMING INTO EFFECT OF THE CONSTRUCTION INDUSTRY SECTIONS OF THE ACT, UNIFORMITY OF INTERPRETATION SHOULD BE MAINTAINED.

6. CONSEQUENTLY THE ANSWER TO THE QUESTION REFERRED TO THE BOARD BY THE MINISTER IS, IN ALL THE CIRCUMSTANCES SET FORTH ABOVE, THE MINISTER OF LABOUR DOES NOT HAVE THE POWER TO APPOINT A CONCILIATION OFFICER UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT. WE HASTEN TO ADD THAT WE ARE NOT DECIDING WHETHER THE MINISTER HAS THE POWER IN THE PROCEEDINGS BEFORE HIM IN THIS MATTER TO APPOINT A CONCILIATION OFFICER UNDER THE OTHER PROVISIONS OF THE LABOUR RELATIONS ACT.

INDEXED ENDORSEMENTS - JURISDICTIONAL DISPUTES

14920(A)-68-JD: BEER PRECAST CONCRETE LIMITED (COMPLAINANT) v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 AND THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION NUMBER 736 (RESPONDENTS).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: B.W. BINNING AND W. WHITE FOR THE COMPLAINANT, R. KOSKIE, T. NEIL AND R. FORD FOR LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506, AUBREY E. GOLDEN, W. BROOK, D. ALDER AND P.A. THOMSON FOR THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION NO. 736.

DECISION OF THE BOARD: APRIL 8, 1969.

1. THE RESPONDENT, THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION NUMBER 736, RELINQUISHES ALL CLAIM TO JURISDICTION OVER THE WORK OF RIGGING AND ERECTING PRECAST WALL CLADDING ON THE UNIVERSITY OF GUELPH PHYSICAL SCIENCE COMPLEX, STAGE #1.

2. THE RESPONDENT, THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION NUMBER 736, CONSENTS TO THE BOARD MAKING A DIRECTION ASSIGNING THE SAID WORK TO MEMBERS OF THE RESPONDENT LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506.

3. THE BOARD ACCORDINGLY DIRECTS THAT THE COMPLAINANT, BEER PRECAST CONCRETE LIMITED, ASSIGN THE WORK OF RIGGING AND ERECTING PRECAST WALL CLADDING ON THE UNIVERSITY OF GUELPH PHYSICAL SCIENCE COMPLEX, STAGE #1, TO MEMBERS OF THE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506.

16086(a)-69-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 506 AND LOCAL 527 (COMPLAINANTS) v. OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL 124 AND BEMAC PROTECTIVE COATING LIMITED (RESPONDENTS).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: R. KOSKIE AND T. NEIL FOR THE COMPLAINANTS, D. POWER, J.G. DENIS AND A. MARIANO FOR THE RESPONDENT UNION, R. McCOMB AND N.G. BEAN FOR THE RESPONDENT COMPANY.

DECISION OF THE BOARD: APRIL 30, 1969.

1. THE COMPLAINANTS IN THEIR COMPLAINT HAVE REQUESTED THAT THE BOARD MAKE AN INTERIM ORDER WITH RESPECT TO THE ASSIGNMENT OF WORK WHICH IS IN DISPUTE BETWEEN THE COMPLAINANTS AND THE RESPONDENT TRADE UNION.

2. THE BOARD IS SATISFIED THAT A STRIKE IS TAKING PLACE BY REASON OF THE ASSIGNMENT OF WORK WHICH IS THE SUBJECT MATTER OF THE INSTANT DISPUTE.

3. HAVING CONSIDERED THE EVIDENCE AND REPRESENTATIONS OF THE PARTIES, THE BOARD DEEMS IT ADVISABLE IN ALL THE CIRCUMSTANCES TO MAKE THE FOLLOWING INTERIM ORDER:

THE RESPONDENT BEMAC PROTECTIVE COATING LIMITED SHALL ASSIGN ALL WORK IN CONNECTION WITH THE PREPARATION, APPLICATION AND FINISHING OF ASPHALT, PLASTIC OR MASTIC PRODUCTS BEING DONE BY THE SAID COMPANY AT THE DATA CENTER PROJECT LOCATED IN OTTAWA TO EMPLOYEES OF THE SAID COMPANY WHO ARE MEMBERS OF THE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA.

THIS ORDER SHALL BECOME EFFECTIVE FORTHWITH AND SHALL REMAIN IN EFFECT UNTIL SUCH TIME AS THE BOARD ISSUES A FURTHER DIRECTION.

16086(b)-69-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 AND LOCAL 527 (APPLICANTS) v. OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 124 (RESPONDENT).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: R. KOSKIE AND T. NEIL FOR THE APPLICANTS, D. POWER, J.G. DENIS AND A. MARIANO FOR THE RESPONDENT.

DECISION OF THE BOARD: APRIL 30, 1969.

1. THE APPLICANTS ARE REQUESTING THAT THE BOARD ISSUE A DIRECTION THAT THE RESPONDENT CEASE AND DESIST FROM DOING ANYTHING INTENDED OR LIKELY TO INTERFERE WITH THE TERMS OF AN INTERIM ORDER ISSUED BY THE BOARD ON APRIL 30TH, 1969 (BOARD FILE No. 16086(a)-69-JD).

2. THE INTERIM ORDER, EXCLUSIVE OF THE REASONS ISSUED BY THE BOARD READS:

THE RESPONDENT BEMAC PROTECTIVE COATING LIMITED SHALL ASSIGN ALL WORK IN CONNECTION WITH THE PREPARATION, APPLICATION AND FINISHING OF ASPHALT, PLASTIC OR MASTIC PRODUCTS BEING DONE BY THE SAID COMPANY AT THE DATA CENTER PROJECT LOCATED IN OTTAWA TO EMPLOYEES OF THE SAID COMPANY WHO ARE MEMBERS OF THE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA.

THIS ORDER SHALL BECOME EFFECTIVE FORTHWITH AND SHALL REMAIN IN EFFECT UNTIL SUCH TIME AS THE BOARD ISSUES A FURTHER DIRECTION.

3. HAVING CONSIDERED THE EVIDENCE AND REPRESENTATIONS OF THE PARTIES, THE BOARD DEEMS IT ADVISABLE IN ALL THE CIRCUMSTANCES TO MAKE THE FOLLOWING CEASE AND DESIST DIRECTION:

THE OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 124, ITS OFFICERS, OFFICIALS OR AGENTS SHALL CEASE AND DESIST FROM DOING

ANYTHING INTENDED OR LIKELY TO INTERFERE WITH
THE TERMS OF THE INTERIM ORDER OF THE BOARD
DATED APRIL 30TH, 1969.

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION -

CERTIFICATION

15539-68-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER
WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) v. SPURRELL'S I.G.A.
(RESPONDENT) v. RETAIL CLERKS INTERNATIONAL ASSOCIATION (INTERVENER)
v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS P.J. O'KEEFFE
AND J.E.C. ROBINSON.

DECISION OF THE BOARD: APRIL 2, 1969.

1. THE BOARD HAS RECEIVED A FURTHER LETTER FROM THE INTERVENER
IN THIS MATTER DATED MARCH 7TH, 1969. BY ITS DECISION DATED MARCH
5TH, 1969, THE BOARD DENIED THE INTERVENER'S REQUEST TO RECONSIDER
ITS DECISION DATED FEBRUARY 19TH, 1969. THE INTERVENER BY ITS SUBSE-
QUENT LETTER REFERS TO EVIDENCE WHICH IS NOT BEFORE THIS BOARD FOR
ITS CONSIDERATION. THE BOARD ACTED ON THE REPRESENTATIONS OF THE
PARTIES AND THE EVIDENCE WHICH WAS SUBMITTED TO IT AT THE HEARING IN
THIS MATTER. THE DECISION TO TAKE A REPRESENTATION VOTE OF THE EM-
PLOYEES IN THE VOTING CONSTITUENCY SET OUT IN PARAGRAPH SIX OF THE
DECISION DATED FEBRUARY 19TH, 1969, RESULTED THEREFROM.

2. THERE WAS NO EVIDENCE THEN BEFORE US THAT THERE WERE EM-
PLOYEES OF THE RESPONDENT AS OF THE DATE OF THIS APPLICATION REGU-
LARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND WE CONSIDERED
IN THIS REGARD THE REPRESENTATION OF THE RESPONDENT'S SOLICITOR IN
HIS LETTER DATED JANUARY 29TH, 1969.

3. ACCORDINGLY, THE BOARD DOES NOT DEEM IT ADVISABLE TO
FURTHER RECONSIDER ITS DECISION DATED MARCH 5TH, 1969 AND DENIES
THE REQUEST OF THE INTERVENER.

4. THE REGISTRAR IS DIRECTED TO CONTINUE WITH THE TAKING OF
THE REPRESENTATION VOTE IN THE VOTING CONSTITUENCY AS DIRECTED BY
THE BOARD IN ITS DECISION DATED FEBRUARY 19TH, 1969.

15689-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 721 (APPLICANT) v. ARCAN EASTERN LTD. (RESPONDENT).

BEFORE: G.W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: P.A. THOMSON AND A. MACISAAC FOR THE APPLICANT AND D.S. CRANE FOR THE RESPONDENT.

DECISION OF THE BOARD: APRIL 23, 1969.

1. IN A CERTIFICATE DATED MARCH 7, 1969 THE BOARD CERTIFIED THE APPLICANT UNION AS THE BARGAINING AGENT FOR ALL IRON WORKERS IN THE EMPLOY OF THE RESPONDENT IN BOARD AREA No. 11 SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THAT RANK. IN ITS DECISION OF THE SAME DATE THE BOARD FOUND THAT THE APPLICATION WAS ONE FALLING WITHIN SECTION 92 OF THE LABOUR RELATIONS ACT, THAT IS, THAT IT WAS A CONSTRUCTION INDUSTRY APPLICATION.
2. THE RESPONDENT HAS REQUESTED THE BOARD TO REVIEW ITS DECISION ON THE GROUND THAT THE APPLICATION WAS NOT ONE FALLING WITHIN THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT. A HEARING WAS HELD IN CONNECTION WITH THIS REQUEST AT WHICH TIME THE BOARD HEARD EVIDENCE AND ARGUMENT ON THE ISSUES RAISED BY THE RESPONDENT.
3. THE RESPONDENT IS ENGAGED IN THE MANUFACTURE, INTER ALIA, OF LIGHT DUTY SHELVING AND PALLET RACKING. THE RACKING IN QUESTION IS NORMALLY ASSEMBLED ON THE PREMISES WHERE IT IS TO BE USED. THIS ASSEMBLY OR INSTALLATION MAY AT TIMES BE DONE BY EMPLOYEES OF THE RESPONDENT HIRED FOR THE OCCASION OR CONTRACTED OUT BY THE RESPONDENT TO A SUB-CONTRACTOR, OR THE PURCHASER MAY HIMSELF UNDERTAKE THE ASSEMBLY. IN THE CASE UNDER CONSIDERATION THE ASSEMBLY WAS DONE BY EMPLOYEES OF THE RESPONDENT HIRED FOR THE OCCASION, UNDER THE SUPERVISION OF THE RESPONDENT'S INSTALLATION FOREMEN.
4. EVIDENCE WAS LED TO SHOW THAT IN SOME 95 PER CENT OF THE CASES THE RACKING IS NOT ATTACHED TO THE FLOOR OR THE CEILING OF THE PREMISES WHERE IT IS INSTALLED. HOWEVER, IN THE INSTANT CASE THE RACKING WAS BOLTED TO THE FLOOR AND WAS FURTHER ATTACHED TO THE CEILING BY MEANS OF BRACES AND CLIPS. IT WAS STRESSED THAT THESE RACKS COULD BE EASILY RELOCATED BY PURCHASERS.
5. IT WAS ARGUED BY THE RESPONDENT THAT THE WORK OF ASSEMBLY COULD NOT BE CONSIDERED CONSTRUCTION OF A BUILDING WITHIN THE MEANING OF SECTION 1(1)(DA) OF THE LABOUR RELATIONS ACT, WHICH DEFINES CONSTRUCTION INDUSTRY AS:

...THE BUSINESSES THAT ARE ENGAGED IN CONSTRUCTING, ALTERING, DECORATING, REPAIRING OR DEMOLISHING BUILDINGS, STRUCTURES, ROADS, SEWERS, WATER OR GAS MAINS, PIPE LINES, TUNNELS, BRIDGES, CANALS OR OTHER WORKS AT THE SITE THEREOF.

IF, HOWEVER, THE PALLET RACKING IN THIS CASE HAS BECOME A FIXTURE, IT MUST BE CONSIDERED AS PART OF THE BUILDING AND, IN OUR VIEW, ITS INSTALLATION WOULD COME WITHIN THE MEANING OF THE WORDS "ENGAGED IN CONSTRUCTING...BUILDINGS" IN SECTION 1(1)(DA) OF THE ACT.

6. THE QUESTION THUS IS HAVE THE PALLET RACKS BECOME FIXTURES? WE HAVE GIVEN THIS MATTER OUR CAREFUL CONSIDERATION. IT WOULD APPEAR THAT WHERE AN ARTICLE IS AFFIXED TO THE LAND EVEN SLIGHTLY, SUCH ARTICLE IS TO BE CONSIDERED AS PART OF THE LAND. THE ONUS IS ON THE PARTY CONTENDING THAT IT IS A CHATTEL TO SHOW THAT SUCH ARTICLE WAS INTENDED ALL ALONG TO CONTINUE AS A CHATTEL. SEE BLACKBURN J. IN HOLLAND V. HODGSON, (1872) L.R. 7 C.P. 328 AT P. 335. SEE ALSO ANGER AND HONSBERGER, CANADIAN LAW OF REAL PROPERTY, C. 9. HAVING REGARD TO THE DECISION AND FACTS IN STACK V. T. EATON CO., (1902) 4 O.L.R. 335, WE ARE NOT SATISFIED THAT THE RESPONDENT IN THIS CASE HAS MET THE ONUS LYING ON IT TO SHOW THAT THE RACKING CONTINUED AS A CHATTEL. THE CASE RELIED ON BY THE RESPONDENT, COMITE CONJOINT DE L'INDUSTRIE DE LA CONSTRUCTION DE QUEBEC V. MEN-DES INC. 68 C.L.L.C. PARAGRAPH 14,109, WOULD APPEAR TO BE DISTINGUISHABLE ON ITS FACTS IN THAT THE MOVABLES THERE IN QUESTION WERE HELD IN POSITION BY THEIR OWN WEIGHT AND WERE NOT FASTENED OR FIXED TO THE PREMISES. IN ANY EVENT, THE PRESENT CASE MUST BE DECIDED ON ONTARIO LAW AND NOT THAT OF QUEBEC, WHICH OF COURSE DOES NOT EMBRACE THE COMMON LAW. WE THEREFORE SEE NO REASON FOR ALTERING OUR ORIGINAL DECISION IN THIS MATTER DATED MARCH 7, 1969.

7. WE WISH TO MAKE IT CLEAR THAT OUR DECISION IN THIS CASE IS NOT TO BE CONSTRUED AS CARRYING AN IMPLICATION THAT IF THE SHELVING HAD NOT BEEN AFFIXED TO THE BUILDING THE CASE WOULD NOT HAVE FALLEN UNDER SECTION 92 OF THE LABOUR RELATIONS ACT. WE EXPRESS NO OPINION ON THIS QUESTION, PREFERRING TO LEAVE IT OPEN TO ARGUMENT IN FUTURE CASES.

8. WE SHOULD ALSO LIKE TO MAKE IT CLEAR THAT OUR ORIGINAL FINDING THAT A LIST WAS NOT FILED BY THE RESPONDENT WAS NOT A MISTAKE ON OUR PART AS CONTENTED BY THE RESPONDENT. A RESPONDENT IN A CERTIFICATION CASE IS REQUIRED TO FILE A REPLY TO WHICH ARE ATTACHED SCHEDULES LISTING EMPLOYEES IN VARIOUS CATEGORIES. THESE WERE NOT FILED BY THE RESPONDENT. IT IS TRUE THAT AT OUR REQUEST HE DID SUPPLY THE BOARD WITH A LIST OF NAMES OF HIS EMPLOYEES IN ORDER THAT THE BOARD COULD ARRANGE TO SERVE THE EMPLOYEES INDIVIDUALLY IN VIEW OF THE FACT THAT THE JOB WAS FINISHED. SUCH A LIST

DOES NOT MEET THE BOARD'S REQUIREMENTS UNDER SECTION 69 OF THE BOARD'S RULES. HOWEVER, SINCE NO OTHER LIST WAS SUPPLIED, THE BOARD DID MAKE USE OF THE LIST OF NAMES FILED FOR THE PURPOSE OF ASCERTAINING THE MEMBERSHIP POSITION OF THE APPLICANT.

9. IN THE RESULT, OUR DECISION OF MARCH 7, 1969 IS HEREBY CONFIRMED.

15692-68-R: COUNCIL OF CONCRETE-FORMING TRADE UNIONS (APPLICANT) v. FORMALL LIMITED (RESPONDENT).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

DECISION OF THE BOARD: APRIL 3, 1969.

1. BY LETTER DATED MARCH 20TH, 1969, COUNSEL FOR THE RESPONDENT HAS REQUESTED THAT THE BOARD RECONSIDER ITS DECISION DATED MARCH 11TH, 1969, WHEREIN IT CERTIFIED THE APPLICANT AS BARGAINING AGENT FOR ALL IRONWORKERS, CONSTRUCTION LABOURERS, CEMENT MASONS AND CEMENT MASONS' APPRENTICES, CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT AND EMPLOYEES OF THE RESPONDENT ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTENANCE OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN IN BOARD GEOGRAPHIC AREA #8. THE BASIS OF COUNSEL'S REQUEST IS THAT THE SCHEDULES FILED WITH THE BOARD BY AN OFFICER OF THE RESPONDENT COMPANY WAS POSSIBLY INCORRECT OR INCOMPLETE.

2. OUR RECORD OF THE PROCEEDINGS AT THE BOARD HEARING OF THE APPLICATION SHOWS THAT COUNSEL FOR THE RESPONDENT AGREED THAT THE LIST OF EMPLOYEES FILED BY THE RESPONDENT WAS COMPLETE AND THE TRADE CLASSIFICATIONS OF THOSE EMPLOYEES WERE ACCURATE. FURTHER THE BOARD HAS NO RECORD OF THE RESPONDENT MAKING ANY REPRESENTATIONS TO THE EFFECT THAT THE FORMING BUSINESS DID NOT HAVE TRADES SUCH AS IRONWORKERS, CEMENT MASONS, CARPENTERS AND OPERATING ENGINEERS. IN THESE CIRCUMSTANCES, THE BOARD SEES NO REASON TO RECONSIDER ITS DECISION OF MARCH 11TH, 1969.

3. THE REQUEST OF COUNSEL FOR THE RESPONDENT ACCORDINGLY IS DENIED.

15765-68-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1687 (APPLICANT) v. K.V.C. ELECTRIC LIMITED (RESPONDENT).

BEFORE: G.W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R.W. TEAGLE.

DECISION OF THE BOARD: APRIL 2, 1969.

1. ON MARCH 17, 1969 THE BOARD CERTIFIED THE APPLICANT AS THE BARGAINING AGENT FOR ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN BOARD AREA No. 16. IN THAT DECISION THE BOARD STATED AS FOLLOWS:

THE RESPONDENT MADE CERTAIN ALLEGATIONS RESPECTING THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT IN SUPPORT OF ITS APPLICATION. THE BOARD HAS CONDUCTED ITS USUAL INVESTIGATION INTO THIS MATTER AND IS OF THE OPINION THAT NO FURTHER INQUIRIES ARE NECESSARY.

THE REPONDENT HAS NOW REQUESTED THE BOARD TO MAKE A FURTHER EXAMINATION WITH RESPECT TO THE AFOREMENTIONED ALLEGATIONS.

2. THE ALLEGATIONS WERE BASED ON STATEMENTS ALLEGED TO HAVE BEEN MADE TO THE RESPONDENT'S MANAGER AND THE RESPONDENT'S BOOKKEEPER BY CERTAIN EMPLOYEES TO THE EFFECT THAT THREE EMPLOYEES HAD NOT PAID ANY MONEY TO THE UNION ORGANIZER IN CONNECTION WITH THEIR APPLICATIONS FOR MEMBERSHIP. IN SUCH CIRCUMSTANCES, IF ANY OF THE EMPLOYEES IN QUESTION ARE CLAIMED BY THE APPLICANT AS MEMBERS IT IS THE PRACTICE OF THE BOARD TO SEND OUT AN EXAMINER OR OTHER REPRESENTATIVE TO INTERVIEW SUCH EMPLOYEE OR EMPLOYEES PERSONALLY AND OBTAIN A SIGNED STATEMENT. IT IS NOT THE PRACTICE OF THE BOARD TO INTERVIEW PERSONS TO WHOM STATEMENTS ARE ALLEGED TO HAVE BEEN MADE, IN THIS CASE, THE MANAGER AND THE BOOKKEEPER. IN THE PRESENT CASE THE BOARD FOLLOWED ITS USUAL POLICY AND INTERVIEWED THE EMPLOYEES CLAIMED AS MEMBERS AND OBTAINED SIGNED STATEMENTS FROM THEM WHICH SATISFIED THE BOARD, AS STATED IN ITS EARLIER DECISION, THAT NO FURTHER INQUIRIES WERE NECESSARY.

3. THE RESPONDENT NOW ALLEGES THAT, SUBSEQUENT TO THE INQUIRIES CONDUCTED BY THE BOARD'S OFFICER, AN EMPLOYEE MADE FURTHER STATEMENTS TO THE BOOKKEEPER, AGAIN TO THE EFFECT THAT MONEY HAD NOT BEEN PAID TO THE UNION ORGANIZER AT THE TIME THE APPLICATIONS WERE SIGNED.

4. AS NOTED ABOVE, THE BOARD HAS SIGNED STATEMENTS OF EMPLOYEES IN ITS POSSESSION AND THE BOARD IS NOT PREPARED TO CONDUCT FURTHER INVESTIGATIONS INTO THIS MATTER. HOWEVER, IT IS OPEN TO THE RESPONDENT, IF IT SO WISHES, TO REQUEST THE BOARD TO REVIEW ITS DECISION ON THE GROUND THAT THE BOARD HAS BEEN MISLED. IF SUCH A REQUEST IS MADE, ALLEGATIONS WOULD HAVE TO BE FILED WITH THE BOARD AND THE RESPONDENT WOULD HAVE THE CARRIAGE OF THE

PROCEEDINGS IN THE SENSE THAT IT WOULD BE REQUIRED TO ADDUCE EVIDENCE IN THE USUAL WAY TO SUPPORT ITS ALLEGATIONS.

5. THE REQUEST OF THE RESPONDENT AS CONTAINED IN ITS LETTER OF MARCH 26, 1969 IS DENIED.

EXCERPTS FROM DECISIONS IN CONSTRUCTION INDUSTRY CASES

15969-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) v. CAMBRIAN CONSTRUCTION LIMITED (RESPONDENT).

6. THE RESPONDENT IN ITS REPLY CLAIMS TO HAVE "ASSIGNED HIS BARGAINING RIGHTS TO THE OTTAWA CONSTRUCTION ASSOCIATION" IN WHICH IT HAS APPLIED FOR MEMBERSHIP. DESPITE THE FACT THAT FORMAL CONFIRMATION OF ACCEPTANCE HAS NOT BEEN RECEIVED, THE RESPONDENT CONSIDERS ITSELF "PARTIES TO AND BOUND BY THE CONDITIONS OF THE CURRENT LABOUR AGREEMENT BETWEEN THE ASSOCIATION AND LOCAL UNION 93, EXPIRING APRIL 30TH, 1969". HAVING REGARD TO THE PRINCIPLES ENUNCIATED IN THE FOUNDATION COMPANY OF CANADA CASE, 57 CLLC, PARAGRAPH 18, 078, IT SEEMS CLEAR THAT THE RESPONDENT IS NOT IN FACT A PARTY TO THAT AGREEMENT.

(APRIL 16, 1969).

16031-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) v. INDUSTRIAL CARPET INSTALLATION (RESPONDENT).

THE NEW DESCRIPTON OF BOARD AREA No. 15 (FORMERLY, THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT) IS "THE REGIONAL MUNICIPALITY OF OTTAWA - CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL". THE CHANGE IN THE DESCRIPTION DOES NOT ALTER THE GEOGRAPHIC SIZE OF THE AREA FORMERLY COVERED BY THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT.

7. THE BOARD FURTHER FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

(APRIL 30, 1969).

16038-69-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. JOHN HARVIE LIMITED (RESPONDENT).

4. THE PARTIES TO THIS APPLICATION ARE IN AGREEMENT THAT THE TWO EMPLOYEES INVOLVED ARE ENGAGED IN BOTH SHOP AND "ON SITE" WORK. WHILE IT MAY BE THAT THESE TWO EMPLOYEES DO REPAIR WORK IN THE SHOP IN CONNECTION WITH "ON SITE" INSTALLATIONS AND SERVICING, THE BOARD HAS NEVERTHELESS HELD THAT SUCH SHOP WORK IS NOT "ON SITE" WORK AND CONSEQUENTLY, DOES NOT FALL WITHIN THE DEFINITION OF "CONSTRUCTION INDUSTRY" IN SECTION 1(1)(DA) OF THE LABOUR RELATIONS ACT. SINCE THE APPLICANT IS CLAIMING BARGAINING RIGHTS FOR EMPLOYEES DOING BOTH KINDS OF WORK, THE APPLICATION CANNOT BE TREATED AS ONE UNDER SECTION 92 OF THE ACT. REFERENCE IS MADE TO THE CANADIAN PITTSBURGH INDUSTRIES LIMITED ET AL CASE (BOARD FILE No. 15984-69-M).

(APRIL 28, 1969).

Y, 1969



Monthly Report



ONTARIO LABOUR RELATIONS BOARD

1.	CERTIFICATION	
	(A) BARGAINING AGENTS CERTIFIED	146
	(B) APPLICATIONS DISMISSED	158
	(C) APPLICATIONS WITHDRAWN	161
2.	APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS	162
3.	APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS	162
4.	APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL	163
5.	APPLICATIONS FOR CONSENT TO PROSECUTE	164
6.	COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE)	165
7.	APPLICATIONS UNDER SECTION 47A	167
8.	APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2)	168
9.	REFERENCE TO BOARD PURSUANT TO SECTION 79A	168
10.	JURISDICTIONAL DISPUTES	168
11.	APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION	169
12.	INDEXED ENDORSEMENTS	

CERTIFICATION

14781-68-R:	THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO	169
15523-68-R:	YORK COUNTY BOARD OF EDUCATION	172
15567-68-R:	INTERNATIONAL HARVESTER COMPANY OF CANADA LIMITED	175
15607-68-R:	IMPERIAL OPTICAL COMPANY LIMITED	179
15629-68-R:	CANADIAN MOTOR LAMP COMPANY, LIMITED	189
15636-68-R:	TRW ELECTRONIC COMPONENTS LIMITED	193
15656-68-R:	DOME MINES LIMITED	196
15709-68-R:	ESSEX PUBLIC UTILITIES COMMISSION	207
15719-68-R:	PARAGON TOOLS COMPANY, LIMITED	209
15812-68-R:	MATTHEWS GROUP LIMITED	211
15953-69-R:	SCARBOROUGH REGIONAL SCHOOL OF NURSING	214
15959-69-R:	CHARTERS PUBLISHING COMPANY, LIMITED	215
15966-69-R:	HEATH & SHERWOOD UNDERGROUND DRILLING DIVISION OF GLENGARRY FOREST PRODUCTS LIMITED	
15992-69-R:	CROWE FOUNDRY LIMITED	217
		218

	PAGE
CERTIFICATION (CONTINUED)	
16003-69-R: THE HALTON COUNTY BOARD OF EDUCATION	221
16007-69-R: L. J. BENDER OIL HEATING	222
16016-69-R: HONEY CONTROLS LIMITED	223
16043-69-R: NORTH AMERICAN PLASTICS CO. LIMITED	225
16114-69-R: CARL & DON LECLAIR LIMITED	226
TERMINATION	
15839-68-R: PROCTOR-LEWYT DIVISION OF SCM (CANADA) LIMITED (FORMERLY PROCTOR-SILEX LIMITED)	228
16117-69-R: MODERN FOOTWEAR COMPANY, A DIVISION OF JACK SCHWEBEL LIMITED	230
16163-69-R: H. GRAY LIMITED	232
STRIKE UNLAWFUL	
16097-69-U: WINDSOR CONSTRUCTION ASSOCIATION	234
PROSECUTION	
15989-69-U: STRAND MILLWORK LIMITED AND CENTENNIAL LONDON CABINETS LIMITED	236
SECTION 65	
15389-68-U: KAYSER ROTH OF CANADA LIMITED	239
15598-68-U: HYDRO ELECTRIC POWER COMMISSION OF ONTARIO	249
15632-68-U: EVOY-MCLEAN LIMITED	265
15780-68-U: ESAM CONSTRUCTION LTD.	267
15817-68-U: CANADYLET CLOSURES DIVISION OF INTERNATIONAL SILVER COMPANY OF CANADA LIMITED	273
15819-68-U: REININGER & SON LTD.	277
15883-68-U: MANAGEMENT OF HURON LODGE ROBERT D. CHAPPELL ADMINISTRATOR RALPH SHARP ASSISTANT PAUL SENAY LOCAL 543 # C.U.P.E. PRESIDENT (BOTH PARTIES) CORPORATION OF CITY OF WINDSOR AND CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 543	279
15909-68-U: PEARL LAUNDRY CO. LIMITED	282
16139-69-U: PRACTICAL NURSES REGISTRY, (MRS.) CHRISTINE YETMAN, REGISTRAR	286
SECTION 47(A)	
15561-68-M: THE WATERLOO COUNTY BOARD OF EDUCATION	287
SECTION 79A	
15999-69-M: BECKER MILK COMPANY LIMITED	293
JURISDICTIONAL DISPUTE	
16086(A)-69-J D: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL 124 AND BEMAC PROTECTIVE COATING LIMITED	295

RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

15765-68-R:	K. V. C. ELECTRIC LIMITED	297
15772-68-R:	THE FALK CORPORATION OF CANADA LIMITED	299
15898-68-R:	BEAVER LUMBER COMPANY LIMITED	302
16038-69-R:	JOHN HARVIE LIMITED	302

13. EXCERPT FROM DIVISION IN CONSTRUCTION INDUSTRY CASE

303

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING MAY 1969

BARGAINING AGENTS CERTIFIED DURING MAY

NO VOTE CONDUCTED

15523-68-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. YORK COUNTY BOARD OF EDUCATION (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF YORK, SAVE AND EXCEPT HEAD CARETAKERS WORKING IN SECONDARY SCHOOLS, SUPERVISORS, FOREMEN, CHIEF ENGINEERS, ASSISTANT CHIEF ENGINEERS PERFORMING SUPERVISORY FUNCTIONS, CAFETERIA MANAGERS, CAFETERIA MANAGERESSES, PERSONS ABOVE ANY OF THE AFORESAID RANKS, OFFICE AND CLERICAL STAFF, TEACHERS AS DEFINED IN THE TEACHING PROFESSION ACT, REGISTERED NURSES, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR (24) HOURS PER WEEK." (253 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 172).

15629-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. CANADIAN MOTOR LAMP COMPANY, LIMITED (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT OTTER LAKE SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, SECRETARY TO THE PLANT MANAGER, SECRETARY TO THE CONTROLLER, GENERAL ACCOUNTANT, COST AND BUDGET ANALYST, EMPLOYEES OF THE PERSONNEL DEPARTMENT, PLANT ENGINEER, FIRST AID ATTENDANTS." (11 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 189).

15656-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. DOME MINES LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS MINE, MILL AND PLANT IN THE TOWNSHIPS OF TISDALE, WHITNEY AND SHAW IN THE DISTRICT OF COCHRANE, SAVE AND EXCEPT SHIFT BOSSES, FOREMEN (INCLUDING ASSISTANT FOREMEN) AND TRAINING SUPERVISORS, PERSONS ABOVE THE RANK OF SHIFT BOSS, FOREMAN (INCLUDING ASSISTANT FOREMAN) OR TRAINING SUPERVISOR, OFFICE AND CLERICAL STAFF (INCLUDING THOSE IN THE MINE, MILL, WAREHOUSE AND YARD OFFICES), ENGINEERING DEPARTMENT,

GEOLOGICAL DEPARTMENT (OTHER THAN SAMPLERS), REFINER, ASSISTANT REFINER, CHIEF ASSAYER, ASSISTANT ASSAYER, SECURITY GUARDS, HEAD GATEMAN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (830 EMPLOYEES IN THE UNIT).
(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 196).

15695-68-R: COUNCIL OF CONCRETE-FORMING TRADE UNIONS (APPLICANT) v. MIRMAR HOLDINGS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS AND CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, AND TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (33 EMPLOYEES IN THE UNIT).

15709-68-R: LOCAL UNION 773 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) v. ESSEX PUBLIC UTILITIES COMMISSION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ESSEX SAVE AND EXCEPT MANAGER AND THOSE ABOVE THE RANK OF MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS ASSOCIATED ON A COOPERATIVE TRAINING BASIS WITH THE ESSEX DISTRICT HIGH SCHOOL." (7 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 207).

15820-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE CORPORATION OF THE TOWNSHIP OF MARKHAM (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS OFFICE, CLERICAL AND TECHNICAL OPERATIONS, SAVE AND EXCEPT TOWNSHIP CLERK, DEPUTY TOWNSHIP CLERK, TOWNSHIP TREASURER, PLANNING DIRECTOR, TOWNSHIP ENGINEER, ASSISTANT TOWNSHIP ENGINEER, AND PRIVATE SECRETARY TO THE TOWNSHIP CLERK." (25 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15881-68-R: INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA, AMALGAMATED PLANT GUARDS, LOCAL 1958 (APPLICANT) v. UNIVERSITY OF WINDSOR (RESPONDENT).

UNIT: "ALL SECURITY GUARDS EMPLOYED BY THE RESPONDENT AT WINDSOR SAVE AND EXCEPT SERGEANTS, PERSONS ABOVE THE RANK OF SERGEANT AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (9 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT SECURITY GUARDS - PART TIME, PERSONS WHOSE DUTIES ARE CONFINED TO BEING PARKING LOT ATTENDANTS AND LIBRARY ATTENDANTS ARE NOT INCLUDED IN THE BARGAINING UNIT.

15902-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO: CLC (APPLICANT) v. GAMBLE ROBINSON LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (10 EMPLOYEES IN THE UNIT).

(HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES).

FOR PURPOSES OF CLARITY, THE BOARD DECLARED THAT DRIVER-SALESMEN ARE INCLUDED IN THE BARGAINING UNIT.

FOR PURPOSES OF CLARITY, THE BOARD DECLARED THAT SALESMEN ARE NOT INCLUDED IN THE BARGAINING UNIT.

15953-69-R: NURSES' ASSOCIATION SCARBOROUGH REGIONAL SCHOOL OF NURSING (APPLICANT) v. SCARBOROUGH REGIONAL SCHOOL OF NURSING (RESPONDENT).

UNIT: "ALL REGISTERED AND GRADUATE NURSES OF THE RESPONDENT, SAVE AND EXCEPT LIBRARIAN, ASSISTANT DIRECTOR, PERSONS ABOVE THE RANK OF ASSISTANT DIRECTOR." (15 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 214).

15965-69-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (APPLICANT) v. HECTOR DUBOIS & SONS GENERAL TRUCKING (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN VALLEY EAST TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (2 EMPLOYEES IN THE UNIT).

15966-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. HEATH & SHERWOOD UNDERGROUND DRILLING DIVISION OF GLENGARRY FOREST PRODUCTS LIMITED (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT THE LITTLE STOBIE MINE AND KIRKWOOD MINE IN THE DISTRICT OF SUDBURY SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (26 EMPLOYEES IN THE UNIT).

(APPLICANT CERTIFIED).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT THE NORTH RANGE MINE IN THE DISTRICT OF SUDBURY SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (7 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 217).

15980-69-R: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) v. ROMAT ORNAMENTAL IRON LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO SAVE AND EXCEPT SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, OFFICE STAFF, SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR (24) HOURS PER WEEK." (23 EMPLOYEES IN THE UNIT).

16004-69-R: UNION OF CANADIAN RETAIL EMPLOYEES (APPLICANT) v. LOBLAW GROCETERIAS CO. LIMITED (RESPONDENT) v. INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS STORE SERVICE DEPARTMENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, AND PERSONS ABOVE THE RANK OF FOREMAN." (13 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

FOR THE PURPOSE OF CLARITY THE BOARD NOTED THAT DISPATCHERS ARE NOT INCLUDED IN THE BARGAINING UNIT.

16007-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. L. J. BENDER OIL HEATING (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, SALES STAFF, PERSONS REGULARLY EMPLOYED TWENTY-FOUR HOURS PER WEEK OR LESS, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (2 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 222).

16008-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. H. RAWLINSON ESSO HOME HEAT SERVICE DEALER (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, SALES STAFF, PERSONS REGULARLY EMPLOYED TWENTY-FOUR HOURS PER WEEK OR LESS, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (2 EMPLOYEES IN THE UNIT).

16011-69-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) v. THE GOLD CREST PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (137 EMPLOYEES IN THE UNIT).

16016-69-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) v. HONEYWELL CONTROLS LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BOWMANVILLE SAVE AND EXCEPT FOREMEN, SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN, OR SUPERVISOR, OFFICE AND SALES STAFF, ENGINEERING, LABORATORY AND DESIGN PERSONNEL, AND HAVING REGARD TO THE AGREEMENT OF THE PARTIES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD OR ON A CO-OPERATIVE TRAINING BASIS WITH A UNIVERSITY." (72 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 223).

16018-69-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) v. BRANEICO SALES LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (17 EMPLOYEES IN THE UNIT).

16021-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. WILF. DOONER ESSO HOME HEAT SERVICE DEALER (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, SALES STAFF, PERSONS REGULARLY EMPLOYED TWENTY-FOUR HOURS PER WEEK OR LESS, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (2 EMPLOYEES IN THE UNIT).

16022-69-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA. A.F.L. C.I.O. C.L.C. (APPLICANT) v. FIORENTINO PRODUCERS LTD. (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NIAGARA FALLS SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION." (57 EMPLOYEES IN THE UNIT).

16023-69-R: CANADIAN TRANSPORTATION WORKERS' UNION No. 158, N.C.C.L. (APPLICANT) v. CAPITAL CITY TRANSPORT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS TERMINAL IN OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DRIVERS, CHECKERS, DOCKMEN, SECURITY GUARDS, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (10 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16045-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. THOMSON BROS. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, SALES STAFF, PERSONS REGULARLY EMPLOYED TWENTY-FOUR HOURS PER WEEK OR LESS, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (2 EMPLOYEES IN THE UNIT).

16046-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. E. PARKER OIL HEATING (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, SALES STAFF, PERSONS REGULARLY EMPLOYED TWENTY-FOUR HOURS PER WEEK OR LESS, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (2 EMPLOYEES IN THE UNIT).

16047-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. HAROLD COPELAND ESSO BURNER DEALER (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED TWENTY-FOUR HOURS PER WEEK OR LESS, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (2 EMPLOYEES IN THE UNIT).

16049-69-R: SHOPMEN'S LOCAL UNION No. 757 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (AFFILIATED TO THE AFL, CIO & CLC) (APPLICANT) v. WAYNE FORGE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION, AND PERSONS ENGAGED IN ERECTION, INSTALLATION AND CONSTRUCTION WORK." (12 EMPLOYEES IN THE UNIT).

16076-69-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) v. WEYERHAEUSER CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN ITS WOODS OPERATION IN JOCKO TOWNSHIP AND THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO IN THE DISTRICT OF NIPISSING, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (42 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

FOR PURPOSES OF CLARITY, THE BOARD DECLARED THAT GARAGE MECHANICS EMPLOYED BY THE RESPONDENT AT MATTAWA ARE NOT INCLUDED IN THE BARGAINING UNIT.

16078-69-R: TEAMSTERS' LOCAL UNION NO. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (APPLICANT) v. SALCO CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OAKVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (5 EMPLOYEES IN THE UNIT).

16080-69-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL NO. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. VAN GASSEN ASPHALT PAVING CO. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT AND EMPLOYEES OF THE RESPONDENT ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, IN THE COUNTIES OF ESSEX AND KENT." (7 EMPLOYEES IN THE UNIT).

16084-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 249 (APPLICANT) v. GRANT-MILLS LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

16091-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 446 (APPLICANT) v. CON-BRIDGE LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE CITY OF SAULT STE. MARIE, THE TOWNSHIP OF PRINCE AND THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

16093-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. OTTO - JOHN WELDING CO. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (3 EMPLOYEES IN THE UNIT).

16102-69-R: LOCAL 1590, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) v. EAGLE ELECTRIC OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (20 EMPLOYEES IN THE UNIT).

16103-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) v. CONCRETE COLUMN CLAMPS (1961) LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

16113-69-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION 141 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. OXFORD SAND & GRAVEL LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF OXFORD, SAVE AND EXCEPT DISPATCHER AND FOREMAN, PERSONS ABOVE THE RANK OF DISPATCHER AND FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR (24) HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (13 EMPLOYEES IN THE UNIT).

16116-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 597 (APPLICANT) v. O. J. GAFFNEY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF HOPE IN THE COUNTY OF DURHAM AND THE TOWNSHIPS OF SOUTH MONAGHAN, HAMILTON, HALDIMAND AND ALNWICK IN THE COUNTY OF NORTH-UMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (17 EMPLOYEES IN THE UNIT).

16124-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. MARTINGALE VILLA NURSING HOME (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT BRADFORD, SAVE AND EXCEPT THE ASSISTANT ADMINISTRATOR, PERSONS ABOVE THE RANK OF ASSISTANT ADMINISTRATOR, REGISTERED NURSES, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (20 EMPLOYEES IN THE UNIT).

FOR THE PURPOSE OF CLARITY, THE BOARD NOTED THAT THE REGISTERED NURSES EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF THE LABOUR RELATIONS ACT.

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT BRADFORD REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, SAVE AND EXCEPT THE ASSISTANT ADMINISTRATOR, PERSONS ABOVE THE RANK OF ASSISTANT ADMINISTRATOR, REGISTERED NURSES, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (9 EMPLOYEES IN THE UNIT).

FOR THE PURPOSE OF CLARITY, THE BOARD NOTED THAT THE REGISTERED NURSES EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF THE LABOUR RELATIONS ACT.

16131-69-R: OPERATIVE PLASTERERS' AND CEMENT MASON'S INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION 124 (APPLICANT) v. S. ROSSINI & SONS LTD. (RESPONDENT).

UNIT: "ALL PLASTERERS AND PLASTERERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (13 EMPLOYEES IN THE UNIT).

16132-69-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. GODERICH WAREHOUSING & TRANSPORT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT OPERATING OUT OF ITS TERMINALS IN THE COUNTY OF MIDDLESEX AND THE COUNTY OF ESSEX, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (9 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16135-69-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) v. REYCO OF CANADA, DIVISION OF A.J. INDUSTRIES (CANADA) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN GRIMSBY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (8 EMPLOYEES IN THE UNIT).

16140-69-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. HUMPTY DUMPTY POTATO CHIP DIVISION OF SUNSHINE BISCUITS (CANADA) LTD. (RESPONDENT).

UNIT: "ALL DRIVER SALESMEN OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND RETAIL, WHOLESALE AND DEPARTMENT STORE UNION." (33 EMPLOYEES IN THE UNIT).

16141-69-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION (APPLICANT) v. CRANE CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS ONTARIO POTTERY DIVISION AT TRENTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, LABORATORY PERSONNEL, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (15 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16146-69-R: TRENTON CONSTRUCTION WORKERS ASSOCIATION, LOCAL No. 52, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. MAURICE H. ROLLINS CONSTRUCTION LIMITED COMMERCIAL DIVISION(RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS AND CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

16160-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) v. DEVON ICE CREAM LIMITED (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT AT ITS PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (5 EMPLOYEES IN THE UNIT).

16147-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. O. J. GAFFNEY LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

16151-69-R: INTERNATIONAL UNION PLANT GUARD WORKERS OF AMERICA LOCAL 1962 (APPLICANT) v. PILKINGTON BROTHERS (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL SECURITY GUARDS OF THE RESPONDENT IN ITS PILKINGTON GLASS MANUFACTURING DIVISION IN THE BOROUGH OF SCARBOROUGH, SAVE AND EXCEPT CHIEF SECURITY OFFICER AND PERSONS ABOVE THE RANK OF CHIEF SECURITY OFFICER." (8 EMPLOYEES IN THE UNIT).

16162-69-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. A. K. PENNER & SONS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS, CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF RAINY RIVER, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

15932-68-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) v. MARSLAND ENGINEERING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WATERLOO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, NURSING STAFF, STUDENTS EMPLOYED THROUGH A CO-OPERATIVE TRAINING PROGRAMME, ENGINEERING STAFF INCLUDING DRAFTING ROOM PERSONNEL AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (847 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	847
NUMBER OF PERSONS WHO CAST BALLOTS	826
NUMBER OF SPOILED BALLOTS	2
BALLOTS SEGREGATED AND NOT COUNTED	4
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	441
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	379

15943-68-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION
(APPLICANT) v. BURKE AND WALLACE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT ASSISTANT PLANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT PLANT MANAGER, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (72 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	67
NUMBER OF PERSONS WHO CAST BALLOTS	67
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	40
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	27

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

15812-68-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION 141 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. MATTHEWS GROUP LIMITED (RESPONDENT).

UNIT: "ALL DUMP TRUCK DRIVERS, TRACTOR-TRAILER DRIVERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	6
NUMBER OF PERSONS WHO CAST BALLOTS BALLOT BOX SEALED	6

(SEE INDEXED ENDORSEMENT PAGE 211).

15936-68-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, CLC (APPLICANT) v. WILLIAM NEILSON LIMITED (RESPONDENT) v. MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL UNION, No. 647 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (INTERVENER #1) v. THE EMPLOYEES COUNCIL, WILLIAM NEILSON LIMITED (INTERVENER #2) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO AND MISSISSAUGA TOWNSHIP, SAVE AND EXCEPT ASSISTANT FOREMEN AND FORE-LADIES AND SUPERVISORS, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN AND FORELADY AND SUPERVISOR, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT WITH THE INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796." (864 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE APPLICANT AND THE RESPONDENT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	715
NUMBER OF PERSONS WHO CAST BALLOTS	691
BALLOTS SEGREGATED AND NOT COUNTED	9
NUMBER OF SPOILED BALLOTS	4
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	476
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER #2	202

APPLICATIONS FOR CERTIFICATION DISMISSED DURING MAY

NO VOTE CONDUCTED

15546-68-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) v. SPURRELL'S I.G.A. (RESPONDENT) v. RETAIL CLERKS INTERNATIONAL ASSOCIATION (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS). (10 EMPLOYEES).

15900-68-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) v. DECORATIVE DISPLAY ADVERTISING LIMITED (RESPONDENT). (21 EMPLOYEES).

15990-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. DUNDEE CONSTRUCTION COMPANY LIMITED (RESPONDENT). (3 EMPLOYEES).

15992-69-R: CROWE FOUNDRY LIMITED EMPLOYEE ASSOCIATION (APPLICANT) v. CROWE FOUNDRY LIMITED (RESPONDENT). (92 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 218).

16019-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. ESAM CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

16033-69-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION LOCAL 91, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) v. L & W AUTOMOTIVE SERVICE (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS). (28 EMPLOYEES).

16044-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. PAGE CARPET SERVICES LIMITED (RESPONDENT). (6 EMPLOYEES).

16059-69-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO, CLC (APPLICANT) v. PURE SPRING CANADA LIMITED (RESPONDENT). (18 EMPLOYEES).

16096-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) v. BEMAC PROTECTIVE COATING LIMITED (RESPONDENT) v. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 172 (INTERVENER #1) v. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION 124, OTTAWA (INTERVENER #2). (3 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

15901-68-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) v. SCREEN PRINT DISPLAY ADVERTISING LIMITED (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (60 EMPLOYEES).

NUMBER OF PERSONS ON REVISED VOTERS' LIST	51
NUMBER OF PERSONS WHO CAST BALLOTS	27
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	21
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	6

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

15539-68-R: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) v. SPURRELL'S I.G.A. (RESPONDENT) v. RETAIL CLERKS INTERNATIONAL ASSOCIATION (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS).

VOTING CONSTITUENCY: "ALL MEAT DEPARTMENT EMPLOYEES OF THE RESPONDENT IN ITS STORES AT LONDON." (7 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	6
NUMBER OF PERSONS WHO CAST BALLOTS	6
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	5

15652-68-R: ALCAN UNIVERSAL HOMES EMPLOYEES' ASSOCIATION (APPLICANT)
v. ALCAN UNIVERSAL HOMES DIVISION OF ALCAN DESIGN HOMES LIMITED
(RESPONDENT) v. INTERNATIONAL WOODWORKERS OF AMERICA (INTERVENER #1)
v. UNITED STEELWORKERS OF AMERICA (INTERVENER #2).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS ALCAN UNIVERSAL HOMES
DIVISION AT WOODSTOCK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE
RANK OF FOREMAN, OFFICE AND SALES STAFF, NURSE AND STUDENTS EMPLOYED
DURING THE SCHOOL VACATION PERIOD." (193 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	192
NUMBER OF PERSONS WHO CAST BALLOTS	189
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER #2, UNITED STEELWORKERS OF AMERICA	84
NUMBER OF BALLOTS MARKED AGAINST INTERVENER #2, UNITED STEELWORKERS OF AMERICA	105

15903-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:
CLC (APPLICANT) v. GAMBLE ROBINSON LIMITED (RESPONDENT).

UNIT #1: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE,
SAVE AND EXCEPT OFFICE MANAGER AND PERSONS ABOVE THE RANK OF OFFICE
MANAGER." (2 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT
SALESMEN ARE NOT INCLUDED IN THE BARGAINING UNIT DESCRIBED ABOVE.

(APPLICANT CERTIFIED).

UNIT #2: "ALL SALESMEN IN THE EMPLOY OF THE RESPONDENT AT SAULT STE.
MARIE." (2 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	2
NUMBER OF PERSONS WHO CAST BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	1
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	1

(APPLICATION DISMISSED).

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING MAY

16072-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. MAVIC CONSTRUCTION LIMITED (RESPONDENT). (9 EMPLOYEES).

16081-69-R: THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (APPLICANT) v. THE CORPORATION OF THE CITY OF SAULT STE. MARIE (RESPONDENT). (22 EMPLOYEES).

16085-69-R: TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO (APPLICANT) v. UNITEX CARPET MILLS LIMITED (RESPONDENT). (26 EMPLOYEES).

16092-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. DUNDEE CONSTRUCTION COMPANY LIMITED (RESPONDENT). (7 EMPLOYEES).

16110-69-R: THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) v. WINDSOR HOSPITAL LINEN SERVICES INC. (RESPONDENT) v. SERVICE EMPLOYEES' UNION, LOCAL 210, WINDSOR (INTERVENER).

16115-69-R: LOCAL 804, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (A.F.L. - C.I.O. - C.L.C.) (APPLICANT) v. GRAND RIVER CABLE T.V. LIMITED (RESPONDENT). (21 EMPLOYEES).

16118-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) v. CAMBRIAN CONSTRUCTION LIMITED (RESPONDENT). (4 EMPLOYEES).

16121-69-R: BRICKLAYERS, MASONS AND PLASTERERS' INTERNATIONAL UNION OF AMERICA (APPLICANT) v. JOHN VERMULST CONSTRUCTION LIMITED (RESPONDENT). (70 EMPLOYEES).

16142-69-R: TORONTO TYPOGRAPHICAL UNION, No. 91 (APPLICANT) v. NATIONAL CASH REGISTER CO. OF CANADA LTD. (RESPONDENT) v. CANADIAN BUSINESS MACHINE WORKERS UNION (INTERVENER #1) v. CANADIAN OFFICE EMPLOYEES' UNION No. 159, N.C.C.L. (INTERVENER #2). (21 EMPLOYEES).

16144-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. SILVIO CONSTRUCTION CO. LTD. (RESPONDENT). (3 EMPLOYEES).

16148-69-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT) v. THE COCHRANE IROQUOIS FALLS BOARD OF EDUCATION (RESPONDENT). (31 EMPLOYEES).

16149-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. VALENTINI GENERAL TRUCKING (RESPONDENT). (16 EMPLOYEES).

16154-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. CEDARVALE TREE SERVICES LTD. (RESPONDENT). (26 EMPLOYEES).

16199-69-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) v. VICTOR COMPTOMETER LTD. (RESPONDENT). (16 EMPLOYEES).

16209-69-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. BRANT OXFORD HOLDINGS (RESPONDENT). (23 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED
OF DURING MAY

16117-69-R: ROCCO LALLONE & MARINO CIMADAMORE EMPLOYEES OF MODERN FOOTWEAR (APPLICANTS) v. FUR, LEATHER AND SHOE UNION (RESPONDENT). (25 EMPLOYEES). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 230).

16163-69-R: A GROUP OF EMPLOYEES OF H. GRAY LIMITED (APPLICANTS) v. RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, LOCAL 1002, A.F.L.: C.I.O.: C.L.C. (RESPONDENT). (40 EMPLOYEES). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 232).

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING
MAY

16169-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. NI-SIL CABLES LIMITED (RESPONDENT) v. CANADIAN LABOUR CONGRESS LOCAL UNION #24825 (PREDECESSOR TRADE UNION). (GRANTED).

16170-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. INDUSTRIAL WIRE & CABLE CO. DIVISION OF CANADA WIRE & CABLE CO. LTD. (RESPONDENT) V. CANADIAN LABOUR CONGRESS LOCAL UNION #24825 (PREDECESSOR TRADE UNION). (GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

MAY

16053-69-U: AMERICAN CAN OF CANADA LIMITED (APPLICANT) V. B. MACKERSIE (RESPONDENT). (WITHDRAWN).

16054-69-U: AMERICAN CAN OF CANADA LIMITED (APPLICANT) V. C. BOULT ET AL. (RESPONDENTS). (WITHDRAWN).

16055-69-U: AMERICAN CAN OF CANADA LIMITED (APPLICANT) V. J. BOOTH ET AL. (RESPONDENTS). (WITHDRAWN).

16062-69-U: AMERICAN CAN OF CANADA LIMITED (APPLICANT) V. J. NOSS ET AL. (RESPONDENTS). (WITHDRAWN).

16063-69-U: AMERICAN CAN OF CANADA LIMITED (APPLICANT) V. W. WATSON, H. OKE, R. PARIS (RESPONDENTS). (WITHDRAWN).

16064-69-U: AMERICAN CAN OF CANADA LIMITED (APPLICANT) V. J. HUTCHEON ET AL. (RESPONDENTS). (WITHDRAWN).

16067-69-U: AMERICAN CAN OF CANADA LIMITED (APPLICANT) V. LOCAL 354 OF THE CAN WORKERS' FEDERAL UNIONS, CANADIAN LABOUR CONGRESS (RESPONDENT). (WITHDRAWN).

16095-69-U: SOUTHAM MURRAY, A DIVISION OF THE SOUTHAM PRINTING CO. LTD., WESTON, ONTARIO (APPLICANT) V. THOSE PERSONS NAMED IN SCHEDULE "A" ATTACHED HERETO (RESPONDENTS). (WITHDRAWN).

16097-69-U: WINDSOR CONSTRUCTION ASSOCIATION (APPLICANT) V. LOCAL UNION 773 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS ESSEX COUNTY, UNIT #1 (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 234).

16104-69-U: SOUTHAM MURRAY, A DIVISION OF THE SOUTHAM PRINTING CO. LTD., WESTON, ONTARIO (APPLICANT) V. PAUL BARCLAY ET AL. (RESPONDENTS). (WITHDRAWN).

16105-69-U: SOUTHAM MURRAY, A DIVISION OF THE SOUTHAM PRINTING CO. LTD., WESTON, ONTARIO (APPLICANT) V. BARTHOLOMEUS VOXEM ET AL (RESPONDENTS). (WITHDRAWN).

16119-69-U: KAZYS KARPAS AND LILLIE KARPAS, CARRYING ON BUSINESS UNDER THE NAME AND STYLE OF CENTRAL HOTEL (APPLICANT) V. RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL-CIO-CLC-LOCAL 448 (RESPONDENT). (DISMISSED).

16120-69-U: KAZYS KARPAS AND LILLIE KARPAS, CARRYING ON BUSINESS UNDER THE NAME AND STYLE OF CENTRAL HOTEL (APPLICANT) V. RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL-CIO-CLC-LOCAL 448, AND GEORGE DURHAM, JOHN HENSON, DOUGLAS REID, JAMES DICKIE, YVONNE HOPPS, STELLA FISHER (RESPONDENTS). (DISMISSED).

16182-69-U: WILLROY MINES LIMITED (APPLICANT) V. UNITED STEELWORKERS OF AMERICA AND LOCAL 5470 OF THE UNITED STEELWORKERS OF AMERICA (RESPONDENTS). (WITHDRAWN).

16184-69-U: WILLROY MINES LIMITED (APPLICANT) V. MESSRS. RAYMOND DELLEMARE, ERNEST SIMMONS, J. R. BROMLEY, KEITH ABBOTT, LEO D'AMOURS, LEO ST. GERMAINE, GERALD AUBREY AND ARTHUR COCKERILL (RESPONDENTS). (WITHDRAWN).

16207-69-U: S. I. GUTTMAN LIMITED (APPLICANT) V. W. MCKNIGHT, J. CHENNETTE, D. CALLAGHAN, C. DINARDI, G. DUQUETTE, W. WEISMAN, R. FOURNIER, D. CLEARY, L. CRAIG, A. POTTER, Y. DAGENAIS, V. TEEVENS, H. LEGGITT AND B. LOGAN AND B. JOLLY (RESPONDENTS). (DISMISSED).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING MAY

15882-68-U: RETAIL CLERKS UNION LOCAL 409 (APPLICANT) V. BUSET'S GROCERY LIMITED (RESPONDENT). (DISMISSED).

15921-68-U: LOCAL 204, SERVICE EMPLOYEES INTERNATIONAL UNION (APPLICANT) V. VICTORIA UNIVERSITY (RESPONDENT). (WITHDRAWN).

15989-69-U: STRAND MILLWORK LIMITED AND CENTENNIAL LONDON CABINETS LIMITED (APPLICANTS) V. WESTERN ONTARIO DISTRICT COUNCIL 1682 NORMAN RD. WINDSOR, ONTARIO J.A. PIRIE, 109 CAMBRIA RD GODERICH AND T.G. HARKNESS 36 GOWER PLACE, LONDON, ONT. (RESPONDENTS). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 236).

15997-69-U: PIGOTT CONSTRUCTION COMPANY LIMITED (APPLICANT) V. PATRICK CAMPBELL ET AL. (RESPONDENTS). (WITHDRAWN).

16036-69-U: CLARKSON CONSTRUCTION COMPANY LIMITED (APPLICANT) V. LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION 183, INTERNATIONAL UNION OF NORTH AMERICA, UGO ROSSINI AND MICHAEL REILLY (RESPONDENTS). (WITHDRAWN).

16037-69-U: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. WIENER ELECTRIC LIMITED (RESPONDENT). (GRANTED).

16056-69-U: AMERICAN CAN OF CANADA LIMITED (APPLICANT) v. R. A. WRIGHT, ET AL. (RESPONDENTS). (WITHDRAWN).

16057-69-U: AMERICAN CAN OF CANADA LIMITED (APPLICANT) v. W. WATSON, H. OKE, R. PARIS (RESPONDENTS). (WITHDRAWN).

16058-69-U: AMERICAN CAN OF CANADA LIMITED (APPLICANT) v. J. HUTCHEON ET AL. (RESPONDENTS). (WITHDRAWN).

16066-69-U: AMERICAN CAN OF CANADA LIMITED (APPLICANT) v. C. BOULT, D.F.A. STRONG, AND LOCAL 354 OF THE CAN WORKERS' FEDERAL UNIONS, CANADIAN LABOUR CONGRESS (RESPONDENTS). (WITHDRAWN).

16070-69-U: AMERICAN CAN OF CANADA LIMITED (APPLICANT) v. C. BOULT ET AL. (RESPONDENTS). (WITHDRAWN).

16071-69-U: AMERICAN CAN OF CANADA LIMITED (APPLICANT) v. B. MACKERSIE (RESPONDENT). (WITHDRAWN).

16075-69-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. R. H. MORTIMER & SON AND WILLIAM MORTIMER (RESPONDENTS). (WITHDRAWN).

16077-69-U: AMERICAN CAN OF CANADA LIMITED (APPLICANT) v. J. BOOTH ET AL. (RESPONDENTS). (WITHDRAWN).

16089-69-U: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. MARTINGALE VILLA NURSING HOME (RESPONDENT). (WITHDRAWN).

16098-69-U: WINDSOR CONSTRUCTION ASSOCIATION (APPLICANT) v. LOCAL UNION 773 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS ESSEX COUNTY, UNIT #1 AND JOHN MCINNIS (RESPONDENTS). (WITHDRAWN).

16183-69-U: WILLROY MINES LIMITED (APPLICANT) v. UNITED STEELWORKERS OF AMERICA AND LOCAL 5470 OF THE UNITED STEELWORKERS OF AMERICA, ET AL. (RESPONDENTS). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF
DURING MAY

15389-68-U: TEXTILE WORKERS UNION OF AMERICA, AFL, CIO-CLC (COMPLAINANT) v. KAYSER ROTH OF CANADA LIMITED (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 239).

15632-68-U: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 1687 (COMPLAINANT) v. EVOY-MCLEAN LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 265).

15769-68-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (COMPLAINANT) v. FAGA FORMS LIMITED (RESPONDENT). (WITHDRAWN).

15780-68-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (COMPLAINANT) v. ESAM CONSTRUCTION LTD. (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 267).

15817-68-U: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL, CIO, CLC (COMPLAINANT) v. CANADYLET CLOSURES DIVISION OF INTERNATIONAL SILVER COMPANY OF CANADA LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 273).

15819-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. REININGER & SON LTD. (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 277).

15863-68-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) v. DECORATIVE DISPLAY ADVERTISING LIMITED (RESPONDENT). (WITHDRAWN).

15883-68-U: ERNEST T. GOUDREAU (COMPLAINANT) v. MANAGEMENT OF HURON LODGE ROBERT D. CHAPPELL ADMINISTRATOR RALPH SHARP ASSISTANT PAUL SENAY LOCAL 543 # C.U.P.E. PRESIDENT (BOTH PARTIES) CORPORATION OF THE CITY OF WINDSOR AND CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 543 (RESPONDENTS). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 279).

15909-68-U: AMALGAMATED CLOTHING WORKERS OF AMERICA, CLC AFL-CIO (COMPLAINANT) v. PEARL LAUNDRY CO. LIMITED (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 282).

15939-68-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (COMPLAINANT) v. FLEETWAY ALUMINUM MFG. LTD. (RESPONDENT). (WITHDRAWN).

- AND -

15968-69-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (COMPLAINANT) v. FLEETWAY ALUMINUM MFG. LTD. (RESPONDENT). (WITHDRAWN).

- AND -

15988-69-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (COMPLAINANT) v. FLEETWAY ALUMINUM MFG. LTD. (RESPONDENT). (WITHDRAWN).

(APPLICATIONS CONSOLIDATED).

16051-69-U: TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO (COMPLAINANT) v. CLOUDFOAM LIMITED (RESPONDENT). (WITHDRAWN).

16065-69-U: RETAIL & FOOD EMPLOYEES LOCAL UNION 175 AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA (COMPLAINANT) v. L & W DISTRIBUTORS LTD. (CARRYING ON BUSINESS AS N & D SUPERMARKET) (RESPONDENT). (WITHDRAWN).

16074-69-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (COMPLAINANT) v. R. H. MORTIMER & SON (RESPONDENT). (WITHDRAWN).

16090-69-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) v. MARTINGALE VILLA NURSING HOME (RESPONDENT). (WITHDRAWN).

16139-69-U: (MRS.) ALBERTINE LALONDE (COMPLAINANT) v. PRACTICAL NURSES REGISTRY, (MRS.) CHRISTINE YETMAN, REGISTRAR (RESPONDENTS). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 286).

APPLICATIONS UNDER SECTION 47A DISPOSED OF DURING MAY

15561-68-M: THE WATERLOO COUNTY BOARD OF EDUCATION (APPLICANT) v. THE CUSTODIANS AND MAINTENANCE ASSOCIATION AND CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 269 (RESPONDENTS).

UNIT: "ALL EMPLOYEES OF THE APPLICANT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN."

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	283
NUMBER OF PERSONS WHO CAST BALLOTS	252
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT THE CUSTODIANS AND MAIN- TENANCE ASSOCIATION	157
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 269	94
NUMBER OF BALLOTS MARKED NO TRADE UNION	1

(SEE INDEXED ENDORSEMENT PAGE 287).

15840-68-M: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1019
(APPLICANT) v. LAMBTON COUNTY ROMAN CATHOLIC SEPARATE SCHOOL
BOARD; ROMAN CATHOLIC SEPARATE SCHOOL BOARD FOR THE CITY OF
SARNIA (RESPONDENTS). (GRANTED).

APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF

DURING MAY

15927-68-M: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL #1023
(APPLICANT) v. SUDBURY GENERAL HOSPITAL (RESPONDENT).
(WITHDRAWN).

15928-68-M: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL #161
(APPLICANT) v. ST. JOSEPH'S HOSPITAL (RESPONDENT). (WITHDRAWN).

REFERENCE TO BOARD PURSUANT TO SECTION 79A

15999-69-M: THE CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 101
(TRADE UNION) v. BECKER MILK COMPANY LIMITED (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 293).

JURISDICTIONAL DISPUTES

15419(A)-68-JD: SOUTHAM-MURRAY, DIVISION OF THE SOUTHAM PRINTING
CO. LTD., WESTON, ONTARIO (COMPLAINANT) v. TORONTO PHOTO-ENGRAVERS'
UNION, LOCAL #35, I.P.E.U. OF N.A. TORONTO TYPOGRAPHICAL UNION NO.
91, I.T.U. (RESPONDENTS). (DISMISSED).

15515(A)-68-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA,
LOCAL 506 (COMPLAINANT) v. WOOD, WIRE AND METAL LATHERS' INTER-
NATIONAL UNION LOCAL 562 AND RELLI FORMS LTD. (RESPONDENTS).
(WITHDRAWN).

15524(A)-68-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA,
LOCAL 506 (COMPLAINANT) v. WOOD, WIRE AND METAL LATHERS' INTER-
NATIONAL UNION LOCAL 562 AND FORMING CONSTRUCTION LTD. (RESPONDENTS).
(WITHDRAWN).

16086(A)-69-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL
506 AND LOCAL 527 (COMPLAINANTS) v. OPERATIVE PLASTERERS AND CEMENT
MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL
124 AND BEMAC PROTECTIVE COATING LIMITED (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 295).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

15618-68-R: FERRITRONICS EMPLOYEE ASSOCIATION (APPLICANT) v. FERRITRONICS LIMITED (RESPONDENT). (REQUEST DENIED).

15765-68-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 1687 (APPLICANT) v. K. V. C. ELECTRIC LIMITED (RESPONDENT) (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 297).

15772-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) v. THE FALK CORPORATION OF CANADA LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

(SEE INDEXED ENDORSEMENT PAGE 299).

15898-68-R: LOCAL UNION 2679 UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. BEAVER LUMBER COMPANY LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 302).

16038-69-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. JOHN HARVIE LIMITED (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 302).

INDEXED ENDORSEMENTS - CERTIFICATION

14781-68-R: THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) v. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (RESPONDENT) v. CANADIAN UNION OF PUBLIC EMPLOYEES - C.L.C., ONTARIO HYDRO EMPLOYEES' UNION LOCAL 1000 (INTERVENER).

BEFORE: J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: IAN SCOTT, ALICK RYDER AND CLIFFORD SCOTT FOR THE APPLICANT, C.A. MORLEY, W.J. CHENERY AND HART M. ROSSMAN FOR THE RESPONDENT, L.A. MACLEAN AND K. CUMMINGS FOR THE INTERVENER.

DECISION OF THE BOARD: MAY 15, 1969.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE APPLICANT REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN.

THE PARTIES WERE UNABLE TO COME TO AN AGREEMENT WITH RESPECT TO THE DESCRIPTION OF THE APPROPRIATE BARGAINING UNIT AND THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT IN THIS MATTER. FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED MARCH 19TH, 1969, AS AMENDED BY A SUPPLEMENTARY REPORT OF THE EXAMINER DATED APRIL 3RD, 1969, THIS MATTER WAS LISTED FOR HEARING TO HEAR THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT. THE APPLICANT TOOK THE POSITION THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS LAKEVIEW GENERATING STATION, WITH THE USUAL EXCEPTIONS, CONSTITUTED A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

THE RESPONDENT AND THE INTERVENER, HOWEVER, TOOK THE POSITION THAT THE APPLICANT WAS NOT ENTITLED TO CARVE OUT EMPLOYEES AT THE LAKEVIEW GENERATING STATION FROM THE ONTARIO-WIDE UNIT REPRESENTED BY THE INTERVENER.

2. THE QUESTION TO BE RESOLVED THEREFORE IS WHETHER THE UNIT PROPOSED BY THE APPLICANT IS APPROPRIATE FOR COLLECTIVE BARGAINING UNDER SECTION 6(1) OF THE LABOUR RELATIONS ACT. SECTION 6(2) OF THE ACT HAS NO APPLICATION IN THIS CASE SINCE WE ARE NOT DEALING WITH A CRAFT BARGAINING UNIT.

3. AT THE TIME THE APPLICATION WAS MADE, EMPLOYEES AT THE LAKEVIEW GENERATING STATION WERE BARGAINED FOR AS PART OF AN ONTARIO-WIDE BARGAINING UNIT REPRESENTED BY THE INTERVENER. THE APPLICANT, HOWEVER, REPRESENTED EMPLOYEES IN A BARGAINING UNIT AT THE RESPONDENT'S HEARN GENERATING STATION IN METROPOLITAN TORONTO AND IN A BARGAINING UNIT AT THE RESPONDENT'S KEITH GENERATING STATION IN WINDSOR.

4. MANY OF THE EMPLOYEES PRESENTLY EMPLOYED BY THE RESPONDENT AT THE LAKEVIEW GENERATING STATION WERE TRAINED AT THE RESPONDENT'S HEARN GENERATING STATION AND WERE REPRESENTED BY THE APPLICANT DURING THAT TRAINING PERIOD. IN ORDER TO STAFF THE LAKEVIEW GENERATING STATION, THE RESPONDENT TRANSFERRED EMPLOYEES FROM THE BARGAINING UNITS REPRESENTED BY THE APPLICANT AND FROM OTHER LOCATIONS WHICH WERE REPRESENTED BY THE INTERVENER. THERE IS NO EVIDENCE THAT THE RESPONDENT EXPERIENCED ANY SERIOUS DIFFICULTY IN THIS REGARD.

5. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT THERE ARE MANY FACTORS WHICH WOULD SUPPORT THE APPLICANT'S POSITION THAT THE LAKEVIEW EMPLOYEES FORM AN APPROPRIATE BARGAINING UNIT WHICH THE APPLICANT SHOULD BE PERMITTED TO CARVE OUT OF THE UNIT PRESENTLY REPRESENTED BY THE INTERVENER. THE MAIN FACTOR IN SUPPORT OF THE APPLICANT'S

POSITION IS THAT THE APPLICANT CURRENTLY BARGAINS ON BEHALF OF ALL EMPLOYEES OF THE RESPONDENT'S HEARN AND KEITH GENERATING STATIONS, WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT. THE APPLICANT OBTAINED THESE BARGAINING RIGHTS WHEN IT WAS SUCCESSFUL IN DISPLACING LOCAL 796 AND LOCAL 844, RESPECTIVELY, OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS AS BARGAINING AGENT FOR THE EMPLOYEES AT THE HEARN AND KEITH GENERATING STATIONS. IN 1952, THE LOCALS OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS WERE CERTIFIED AS BARGAINING AGENTS FOR THOSE GENERATING STATIONS FOLLOWING A REPRESENTATION VOTE BETWEEN THE RESPECTIVE LOCAL AND THE EMPLOYEE ASSOCIATION OF THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO AFTER THE BOARD FOUND CERTAIN EMPLOYEES AT THE GENERATING STATIONS TO BE AN APPROPRIATE BARGAINING UNIT. THE EMPLOYEE ASSOCIATION OF THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO WAS THE PREDECESSOR OF THE INTERVENER IN THIS CASE AND IT REPRESENTED AN ONTARIO-WIDE BARGAINING UNIT WHICH INCLUDED EMPLOYEES AT THE HEARN AND KEITH GENERATING STATIONS AT THAT TIME. THE BOARD THEREFORE, AS EARLY AS 1952, ESTABLISHED A PRACTICE OF FINDING THAT THE EMPLOYEES IN A SINGLE GENERATING STATION COMPRISED AN APPROPRIATE BARGAINING UNIT WHICH COULD BE SEVERED FROM AN ONTARIO-WIDE BARGAINING UNIT.

6. THERE ARE OTHER FACTORS THAT WOULD MILITATE AGAINST SUCH A FINDING WHICH WOULD RESULT IN THE PARTIAL FRAGMENTATION OF THE BARGAINING UNIT CURRENTLY REPRESENTED BY THE INTERVENER. WHILE THE BOARD USUALLY ATTEMPTS TO AVOID THE FRAGMENTATION OF SUBSISTING BARGAINING UNITS, IT IS TO BE NOTED THAT IT IS NOT THE BOARD'S USUAL PRACTICE TO FIND THAT AN APPROPRIATE BARGAINING UNIT WOULD BE ALL EMPLOYEES IN ONTARIO. MOST CERTAINLY, ANY ARGUMENTS AGAINST FRAGMENTATION OF BARGAINING UNITS ARE SERIOUSLY WEAKENED, IF NOT DESTROYED, BY THE FACT THAT THE APPLICANT CURRENTLY BARGAINS ON BEHALF OF EMPLOYEES AT TWO GENERATING STATIONS WHICH HAD BEEN SEVERED FROM AN ONTARIO-WIDE BARGAINING UNIT. WHILE THESE GENERATING STATIONS ARE MUCH SMALLER THAN THE LAKEVIEW GENERATING STATION, THIS FACT DOES NOT DESTROY THE PRINCIPLE OF FRAGMENTATION WHICH HAS BEEN ESTABLISHED. ALTHOUGH EMPLOYEES MAY BE TRANSFERRED ON A PERMANENT BASIS FROM TIME TO TIME TO STAFF NEW GENERATING STATIONS, IT SHOULD BE NOTED THAT THERE WAS NO EVIDENCE OF A DAY-TO-DAY INTERCHANGE OF EMPLOYEES BETWEEN GENERATING STATIONS.

7. AMONG OTHER FACTORS RELIED ON BY THE RESPONDENT WAS THE FACT THAT THE RESPONDENT IS A PUBLIC UTILITY WHICH PROVIDES AN ESSENTIAL SERVICE AND THE BOARD WAS REQUESTED TO GIVE SPECIAL CONSIDERATION TO THIS FACT. AS STATED ABOVE, THE FACT THAT THE RESPONDENT ALREADY BARGAINS WITH MORE THAN ONE TRADE UNION WITH RESPECT TO EMPLOYEES WHO PRODUCE ELECTRICAL POWER HAS NOT CREATED INSURMOUNTABLE PROBLEMS FOR THE RESPONDENT. SINCE THERE IS NO EVIDENCE THAT THE PUBLIC INTEREST HAS BEEN UNDULY THREATENED

IMPAIRED BY THE FACT THAT THE RESPONDENT HAS DEALT WITH MORE THAN ONE TRADE UNION, WE ARE OF OPINION THAT THE WISHES OF THE EMPLOYEES AS TO THE CHOICE OF THE TRADE UNION TO REPRESENT THEM IN AN APPROPRIATE BARGAINING UNIT SHOULD BE RECOGNIZED.

8. THE CONFLICTING FACTORS WHICH ARE REFERRED TO ABOVE ARE NOT READILY RESOLVED BY ANY OVERRIDING CONSIDERATION OR BOARD POLICY. AN ADDITIONAL FACTOR WHICH THE BOARD MAY TAKE INTO CONSIDERATION IN DETERMINING THE APPROPRIATENESS OF A BARGAINING UNIT IS THE WISHES OF THE EMPLOYEES CONCERNED. A REPRESENTATION VOTE HAS ALREADY BEEN TAKEN IN THIS CASE WHEREIN THE EMPLOYEES CONCERNED WERE ASKED TO INDICATE WHETHER OR NOT THEY WISHED TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT OR THE INTERVENER. SINCE IT WOULD BE READILY APPARENT THAT IF THE EMPLOYEES CHOSE TO BE REPRESENTED BY THE APPLICANT THEY WOULD THEREBY ELECT TO BARGAIN SEPARATELY FROM THE OTHER EMPLOYEES IN THE ONTARIO-WIDE BARGAINING UNIT REPRESENTED BY THE INTERVENER, THE RESULTS OF THE REPRESENTATION VOTE ALREADY CONDUCTED WOULD ACCORDINGLY TEND TO INDICATE THE EMPLOYEES' WISHES WITH RESPECT TO THE APPROPRIATENESS OF THE BARGAINING UNIT PROPOSED BY THE APPLICANT IN THIS CASE. IN VIEW OF THE CONFLICTING FACTORS REFERRED TO, THE BOARD IS OF OPINION THAT IT WOULD BE DESIROUS TO ASCERTAIN THE WISHES OF THE EMPLOYEES AS INDICATED IN THE PRE-HEARING REPRESENTATION VOTE IN ORDER TO ASSIST THE BOARD, PURSUANT TO THE PROVISIONS OF SECTION 6(1) OF THE ACT, TO MAKE A DETERMINATION AS TO WHETHER THE BARGAINING UNIT PROPOSED BY THE APPLICANT IS A UNIT WHICH WOULD BE APPROPRIATE FOR COLLECTIVE BARGAINING IN ALL THE CIRCUMSTANCES IN THIS CASE.

9. THE BOARD THEREFORE DIRECTS THE REGISTRAR TO CAUSE THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE IN THIS MATTER TO BE COUNTED AND REPORT TO THE BOARD.

15523-68-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. YORK COUNTY BOARD OF EDUCATION (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS
A. MAIN AND F.W. MURRAY.

DECISION OF THE BOARD: MAY 16, 1969.

• • •

2. THE APPLICANT APPLIED FOR CERTIFICATION FOR A BARGAINING UNIT OF ALL EMPLOYEES OF THE RESPONDENT WITH CERTAIN EXCEPTIONS WHICH ARE NOT RELEVANT AT THIS POINT.

3. THE GROUP OF EMPLOYEES OBJECTORS ARE ENGAGED IN MAINTENANCE WORK. THEY REQUESTED THAT THEY BE EXCLUDED FROM THE BARGAINING UNIT ON THE GROUNDS THAT THEY POSSESS A COMMUNITY OF INTEREST DISTINCT FROM THAT OF OTHER EMPLOYEES IN THE UNIT; EXERCISE SKILLS AND DUTIES THAT ARE DIFFERENT; HAVE DIFFERENT SUPERVISION; HAVE BARGAINED SEPARATE AND APART FROM OTHER EMPLOYEES IN THE PROPOSED UNIT. IT WAS ALSO URGED ON THEIR BEHALF THAT THE PATTERN OF COLLECTIVE BARGAINING IN THE TORONTO AREA INDICATES THAT MAINTENANCE EMPLOYEES BARGAIN SEPARATE AND APART FROM CARETAKERS AND OTHER EMPLOYEES.

4. SUBSEQUENT TO THE HEARING IN THIS MATTER, OBJECTORS REQUESTED LEAVE OF THE BOARD TO HAVE AN EXAMINER APPOINTED AND TO ADDUCE FURTHER EVIDENCE WITH RESPECT TO THE ABOVE POINTS. SINCE FULL OPPORTUNITY TO ADDUCE EVIDENCE AND SUBMIT ARGUMENT TO THE BOARD WAS AFFORDED THE OBJECTORS AT THE HEARING WITH RESPECT TO THE APPLICATION, THE BOARD DECLINES THE REQUEST TO REOPEN THE MATTER OR TO APPOINT AN EXAMINER IN ORDER TO ALLOW THE INTRODUCTION OF EVIDENCE THAT COULD HAVE BEEN PRESENTED AT THE HEARING OF THE MATTER IN THE FIRST INSTANCE.

5. THE ATTENTION OF THE OBJECTORS IS DIRECTED TO THE BOARD'S PRACTICE NOTE #10 WHICH DEALS WITH THE DEFINITION OF BARGAINING UNITS OF EMPLOYEES OF SCHOOL BOARDS. IT SHOULD BE OBSERVED THAT IN THE QUOTATION FROM THE BROCK DISTRICT HIGH SCHOOL BOARD CASE CITED IN THE NOTE, THERE IS A CLEAR INDICATION THAT, PRIOR TO THAT CASE, THE BOARD WAS ACCUSTOMED TO DESCRIBE SUCH UNITS AS ENCOMPASSING MAINTENANCE AND CARETAKING EMPLOYEES IN THE SAME UNIT. THE "ALL EMPLOYEE" UNIT WHICH THE NOTE INDICATES IS THE MORE APPROPRIATE DESCRIPTION IN THE CIRCUMSTANCES WOULD, OF COURSE, EMBRACE MAINTENANCE AND CARETAKING EMPLOYEES.

6. IN A DECISION DATED JULY 22, 1968, THE BOARD OF EDUCATION FOR THE CITY OF OWEN SOUND, O.L.R.B. REPORTS JULY 1968 P. 335, THE BOARD FOUND THAT ALL EMPLOYEES OF THE RESPONDENT AT OWEN SOUND ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT, CONSTITUTE AN APPROPRIATE BARGAINING UNIT. THE BOARD HAS FOLLOWED THAT DECISION IN A NUMBER OF SUBSEQUENT CASES. THE OBVIOUS POINT IS THAT WHILE THE TERMS USED TO DESCRIBE THE UNIT VARY FROM THOSE USED IN THE BROCK DISTRICT CASE, THE FINDING THAT MAINTENANCE EMPLOYEES ARE PROPERLY INCLUDED IN SCHOOL UNITS WITH OTHER EMPLOYEES IS RENDERED MORE EMPHATIC.

7. THE BOARD PRACTICE, IN GENERAL, HAS THEREFORE BEEN TO INCLUDE MAINTENANCE EMPLOYEES WITH OTHERS IN SCHOOL BOARD UNITS.

THIS PRACTICE IS IN CONFORMITY WITH AND FURTHERANCE OF THE BOARD'S WELL RECOGNIZED AVERTION TO THE FRAGMENTATION OF BARGAINING UNITS SUCH AS THE OBJECTORS SEEK IN THE PRESENT CASE.

8. INSOFAR AS THE TORONTO AREA IS CONCERNED, CERTIFICATES WERE GRANTED BY THE BOARD OVER A PERIOD IN 1965 TO THE INTERNATIONAL UNION OF ELECTRICAL WORKERS AND TO OTHER CRAFT UNIONS COVERING PERSONS EMPLOYED BY THE BOARD OF EDUCATION FOR THE CITY OF TORONTO IN THE CATEGORIES PROPER TO THE RESPECTIVE APPLICANT UNIONS BECAUSE OF THE SPECIAL CIRCUMSTANCES THEN EXISTING. THE SITUATION IN THE INSTANT CASE DOES NOT CONFORM TO THAT EXISTING IN THE ABOVE CASES AND THEY DO NOT ASSIST THE OBJECTORS HEREIN. IN FINDING THIS, THE BOARD IS NOT OVERLOOKING THE EVIDENCE OFFERED BY THE OBJECTORS IN WHICH THEY ATTEMPTED TO ESTABLISH "BARGAINING" WITH CERTAIN PREDECESSOR EMPLOYERS.

9. THE BOARD HAS GIVEN CAREFUL CONSIDERATION TO ALL OF THE EVIDENCE AND THE ARGUMENTS SUBMITTED ON BEHALF OF THE OBJECTORS, BUT FINDS NOTHING THEREIN WHICH PERSUADES IT TO DEPART FROM ITS GENERAL AND CUSTOMARY PRACTICE OF INCLUDING MAINTENANCE EMPLOYEES IN BARGAINING UNITS COMPRISING SCHOOL BOARD OR BOARD OF EDUCATION EMPLOYEES. IN VIEW OF ALL OF THE FOREGOING, THE BOARD THEREFORE DENIES THE REQUEST OF THE OBJECTORS.

10. HAVING REGARD TO THE AGREEMENT OF THE APPLICANT AND THE RESPONDENT AS SET OUT IN THE MEMORANDUM OF THE EXAMINER TO THE BOARD, DATED APRIL 3, 1969 (THE PARTIES HAVING WAIVED AN EXAMINER'S REPORT), THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF YORK, SAVE AND EXCEPT HEAD CARETAKERS WORKING IN SECONDARY SCHOOLS, SUPERVISORS, FOREMEN, CHIEF ENGINEERS, ASSISTANT CHIEF ENGINEERS PERFORMING SUPERVISORY FUNCTIONS, CAFETERIA MANAGERS, CAFETERIA MANAGERESSES, PERSONS ABOVE ANY OF THE AFORESAID RANKS, OFFICE AND CLERICAL STAFF, TEACHERS AS DEFINED IN THE TEACHING PROFESSION ACT, REGISTERED NURSES, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR (24) HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

11. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JANUARY 14, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

12. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

15567-68-R: INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS (APPLICANT) V. INTERNATIONAL HARVESTER COMPANY OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: J.V. GOODISON, ALEX WALKER, WILLIAM FRASER AND CAL FREESE FOR THE APPLICANT, E.L. STRINGER, PAUL LANZ AND R.S. FREEMAN FOR THE RESPONDENT, MURRAY DILLON AND LOUIS SPRINGETT FOR THE OBJECTORS.

DECISION OF J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER H.F. IRWIN: MAY 26, 1969.

• • •

2. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE APPLICANT SEEKS TO BE CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES AT FOUR OF THE RESPONDENT'S TRUCK SERVICE CENTRES, THREE OF WHICH ARE LOCATED IN METROPOLITAN TORONTO AND ONE IS LOCATED IN MISSISSAUGA.

3. THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT. THE BOARD HAS CONSIDERED THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT DATED MARCH 27TH, 1969, AS AMENDED BY THE SUPPLEMENTARY REPORT OF THE EXAMINER DATED APRIL 15TH, 1969, AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO.

4. THE THREE TRUCK SERVICE CENTRES IN METROPOLITAN TORONTO MAY BE IDENTIFIED AS THE BATHURST STREET BRANCH, THE ST. CLAIR AVENUE BRANCH AND THE SCARBOROUGH BRANCH. THESE BRANCHES ARE GEOGRAPHICALLY SEPARATED BY FROM 6.8 TO 18.2 MILES. THE MISSISSAUGA BRANCH IS SEPARATED FROM EACH OF THE METROPOLITAN TORONTO BRANCHES BY FROM 6.7 MILES TO 22.7 MILES. OF THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED, THE SCARBOROUGH BRANCH EMPLOYS 13 EMPLOYEES, THE BATHURST BRANCH EMPLOYS 40 EMPLOYEES, THE ST. CLAIR BRANCH EMPLOYS 41 EMPLOYEES AND THE MISSISSAUGA BRANCH EMPLOYS 26 EMPLOYEES. IN ADDITION, THERE ARE A TOTAL OF 73 OTHER EMPLOYEES EMPLOYED AT THE FOUR BRANCHES.

5. THE RESPONDENT HAS ORGANIZED ITS BRANCHES AS INDEPENDENT UNITS EACH HAVING A PRESCRIBED TERRITORY. EACH BRANCH HAS A WELL DEFINED MANAGERIAL STRUCTURE AND THE MANAGEMENT AT THE BRANCHES ARE ACCOUNTABLE FOR THE PROFIT AND EMPLOYMENT PRACTICES AT THE BRANCH. THERE IS A HIGH DEGREE OF INDEPENDENT MANAGERIAL AUTHORITY ENTRUSTED TO THE COMPANY'S MANAGERIAL PERSONNEL AT EACH BRANCH.

WHILE PAYROLL IS PREPARED AT THE COMPANY'S HEAD OFFICE IN HAMILTON ON REPORTS SUBMITTED BY THE BRANCHES, THE PAYROLL IS BROKEN DOWN BY BRANCHES.

6. IN ADDITION TO THE FOUR BRANCHES WITH WHICH WE ARE HERE CONCERNED, THE RESPONDENT OPERATES SIMILAR BRANCHES WHICH CARRY ON THE SAME FUNCTIONS AT LONDON, KITCHENER, NORTH BAY AND HAMILTON. ONLY THE EMPLOYEES AT THE HAMILTON BRANCH ARE CURRENTLY REPRESENTED BY A TRADE UNION.

7. WHILE THE EMPLOYEES AT ONE BRANCH EXERCISE SIMILAR SKILLS WHILE PERFORMING THE SAME TYPE OF WORK UNDER SIMILAR CONDITIONS OF EMPLOYMENT AS EMPLOYEES AT OTHER BRANCHES, THERE DOES NOT APPEAR TO BE ANYTHING, APART FROM THE RELATIVE GEOGRAPHIC PROXIMITY, WHICH WOULD CAUSE THE BOARD TO FIND GREATER INTERDEPENDENCE BETWEEN THE FOUR BRANCHES WITH WHICH WE ARE HERE CONCERNED THAN EXISTS BETWEEN THESE BRANCHES AND OTHER BRANCHES IN ONTARIO.

8. WHILE SOME EMPLOYEES HAVE BEEN TRANSFERRED FROM ONE BRANCH TO ANOTHER, THIS HAS USUALLY BEEN DONE AT THE REQUEST OF THE EMPLOYEE IN ORDER THAT THE EMPLOYEE MAY WORK AT A BRANCH WHICH IS CLOSEST TO HIS RESIDENCE. ONE EMPLOYEE BASED AT THE BATHURST STREET BRANCH ATTENDS AT THE SEVEN OTHER BRANCHES IN THE ONTARIO DISTRICT TO MAKE APPRAISALS OF USED TRUCKS. HOWEVER, HE IS SUBJECT TO THE SUPERVISION OF THE BATHURST BRANCH AT ALL TIMES. ANOTHER EMPLOYEE WHO IS CLASSIFIED AS A MAINTENANCE MAN AT THE BATHURST BRANCH PERFORMS WORK AT THE OTHER THREE BRANCHES OCCASIONALLY AND HAS ALSO WORKED AT THE KITCHENER BRANCH. HOWEVER, THE MAINTENANCE MAN REMAINS UNDER THE SUPERVISION OF THE BATHURST BRANCH MANAGER AT ALL TIMES AND PUNCHES IN AT THE BATHURST BRANCH EACH DAY NO MATTER WHERE HIS WORK IS TO BE PERFORMED. ANY WORK PERFORMED BY ONE BRANCH FOR ANOTHER BRANCH IS TREATED IN THE SAME WAY AS WORK PERFORMED FOR ANY CUSTOMERS OF THE BRANCH.

9. THE RESPONDENT ADDUCED EVIDENCE THAT THE RESPONDENT'S OPERATIONS AT THE FOUR TRUCK SERVICE CENTRES IN QUESTION WERE READILY DISTINGUISHABLE FROM THE OPERATIONS OF THE GOODYEAR TIRE STORES IN TORONTO. THE GOODYEAR STORES ARE TIRE SERVICE STORES WHICH RETAIL CONSUMER GOODS, WHEREAS THE RESPONDENT'S BRANCHES DEAL WITH CAPITAL GOODS AS WELL AS MAJOR SERVICE AND MAINTENANCE OPERATIONS. THE EIGHT GOODYEAR STORES IN METROPOLITAN TORONTO EMPLOY A TOTAL OF 39 EMPLOYEES WITH FROM 2 TO 9 EMPLOYEES AT EACH STORE, WHEREAS THE RESPONDENT EMPLOYS A TOTAL OF 193 EMPLOYEES AT THE FOUR BRANCHES. IN ADDITION, THE RESPONDENT'S BRANCHES ENJOY A LARGE MEASURE OF AUTONOMY WHICH IS ANOTHER DISTINGUISHING FEATURE FROM THE GOODYEAR SERVICE STORES.

10. HAVING CONSIDERED THE BOARD'S DECISION IN THE GOODYEAR SERVICE STORES CASE, 65 C.L.L.C. 16,018, AND THE FACTS SET OUT ABOVE, WE FIND THAT THE RESPONDENT'S OPERATIONS IN ITS TRUCK SERVICE CENTRES CANNOT BE CLASSIFIED AS "RETAIL SERVICE STORES" AND THEREFORE THE FACTS OF THE INSTANT CASE ARE READILY DISTINGUISHABLE FROM THE FACTS IN THE GOODYEAR CASE.

11. WHEN THE CRITERIA WHICH WERE ENUNCIATED BY THE BOARD IN THE USARCO LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1967, P. 526, ARE APPLIED TO THE FACTS OF THIS CASE, WE FIND THAT WHILE SOME OF THE FACTORS SUCH AS THE SKILLS OF THE EMPLOYEES, THE NATURE OF THE WORK AND THE CONDITIONS OF EMPLOYMENT ARE COMMON IN ALL FOUR BRANCHES, WE DO NOT FIND ANY REAL FUNCTIONAL COHERENCE AND INTERDEPENDENCE AMONG THE EMPLOYEES AT THE FOUR BRANCHES WHICH WOULD DISTINGUISH THEM FROM EMPLOYEES IN THE OTHER BRANCHES IN THE ONTARIO DISTRICT. WHILE THREE OF THE BRANCHES ARE IN ONE MUNICIPAL AREA, THEY ARE LOCATED IN ORDER TO GIVE THE GREATEST GEOGRAPHIC COVERAGE TO THE AREA FOR THE PURPOSE OF ATTRACTING CUSTOMERS. THEIR LOCATIONS IN THE AREA ARE NOT CHOSEN BECAUSE OF ANY INTERDEPENDENCE BETWEEN BRANCHES. EACH BRANCH HAS AN INTERNAL FUNCTIONAL COHERENCE AND INDEPENDENCE AND LITTLE OR NO INTERDEPENDENCE WITH OTHER BRANCHES. THERE IS A HIGH DEGREE OF INDEPENDENT MANAGERIAL AUTHORITY AT EACH BRANCH. SINCE THERE IS VIRTUALLY NO INTERCHANGE OF EMPLOYEES BETWEEN BRANCHES AND ALSO AN ARM'S LENGTH BUSINESS RELATIONSHIP BETWEEN BRANCHES, THERE DOES NOT APPEAR TO BE ANY REAL ECONOMIC ADVANTAGE TO THE COMPANY TO TREAT THE FOUR BRANCHES AS ONE BARGAINING UNIT. THE SOURCE OF WORK IS DIFFERENT FOR EACH BRANCH SINCE EACH BRANCH HAS ITS OWN TERRITORY FROM WHICH IT CAN ACTIVELY PROMOTE BUSINESS. IN ADDITION, THE NUMBER OF EMPLOYEES AT EACH BRANCH IS SUCH THAT THE EMPLOYEES AT EACH BRANCH WOULD COMprise A VIABLE BARGAINING UNIT.

12. WHEN ALL THE FACTORS ARE ASSESSED, WE FIND THAT THE EMPLOYEES AT EACH BRANCH FORM AN APPROPRIATE BARGAINING UNIT.

13. THE BOARD THEREFORE FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN MISSISSAUGA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING, HEREINAFTER REFERRED TO AS BARGAINING UNIT #1.

14. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS BATHURST STREET BRANCH IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING, HEREINAFTER REFERRED TO AS BARGAINING UNIT #2.

15. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS ST. CLAIR AVENUE BRANCH IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING, HEREINAFTER REFERRED TO AS BARGAINING UNIT #3.

16. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS SCARBOROUGH BRANCH IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING, HEREINAFTER REFERRED TO AS BARGAINING UNIT #4.

17. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #1, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JANUARY 28TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

18. THE APPLICATION WITH RESPECT TO BARGAINING UNIT #1 IS THEREFORE DISMISSED.

19. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #2, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JANUARY 28TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

20. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO THE EMPLOYEES IN BARGAINING UNIT #2.

21. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #3, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JANUARY 28TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

22. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO THE EMPLOYEES IN BARGAINING UNIT #3.

23. THE BOARD DIRECTS THAT THE REGISTRAR LIST THIS MATTER FOR CONTINUATION OF HEARING TO PERMIT THE BOARD TO CONDUCT ITS USUAL INQUIRY INTO THE DOCUMENT WHICH HAS BEEN FILED IN OPPOSITION TO THIS APPLICATION ON BEHALF OF CERTAIN EMPLOYEES IN BARGAINING UNIT #4.

DECISION OF BOARD MEMBER O. HODGES: MAY 26, 1969.

I DISSENT.

FRAGMENTATION OF BARGAINING UNITS IS NOT ORDINARILY TO BE DESIRED. THE POLICY OF THE BOARD WOULD PERMIT ONE UNIT TO BE FOUND FOR THE THREE LOCATIONS IN METROPOLITAN TORONTO IN THIS INSTANCE.

EMPLOYEES AT ALL THREE LOCATIONS DO THE SAME KIND OF WORK AND THE SERVICE PROVIDED BY THE COMPANY IS THE SAME AT EACH LOCATION.

THE WAGE AND EMPLOYMENT POLICY FOR EACH BRANCH IS APPARENTLY MADE BY THE COMPANY HEAD OFFICE. THE EVIDENCE WAS THAT CONCILIATION PROCEDURES WOULD BE DIRECTED BY HEAD OFFICE.

THE UNION HAS MEMBERSHIP AT EACH LOCATION.

ONE BARGAINING UNIT COULD BE FOUND FOR THE THREE LOCATIONS IN METROPOLITAN TORONTO AND I WOULD SO FIND.

I CONCUR WITH THE MAJORITY IN DISMISSING THE APPLICATION AS IT APPLIES TO THE LOCATION IN MISSISSAUGA.

15607-68-R: OPTICAL & PLASTIC TECHNICIANS & ALLIED WORKERS UNION LOCAL 67 OF U.H.C. & M.W.I.U.-C.L.C. (APPLICANT) v. IMPERIAL OPTICAL COMPANY LIMITED (RESPONDENT) v. THE DOLL & TOY WORKERS OF THE UNITED STATES AND CANADA (INTERVENER).

BEFORE: H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS P.J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: G. CHARNEY, A. RIVERA, M. SILCOFF FOR THE APPLICANT; G.C. HURLBURT, FRED WHITE FOR THE RESPONDENT; AND NO ONE APPEARING FOR THE INTERVENER.

DECISION OF H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER
P.J. O'KEEFFE: MAY 20, 1969.

• • •

2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS LENS PLANTS IN METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES THE BOARD DECLARES THAT THOSE EMPLOYEES CLASSIFIED BY THE RESPONDENT AS FACTORY CLERKS ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

4. THE BOARD INQUIRED INTO THE CIRCUMSTANCES SURROUNDING THE APPLICATION FOR MEMBERSHIP IN THE APPLICANT BY MRS. MARIA STEFANIUK AND M. MARTINIZEN. THE EVIDENCE DISCLOSES THAT VINCE DEFARNO, VICE-PRESIDENT OF LOCAL 67 OF THE APPLICANT, AND ANGEL RIVERA, BUSINESS AGENT, ATTENDED AT THE STEFANIUK HOME ON DECEMBER 10TH, 1968. MR. DEFARNO WENT INTO THEIR HOUSE AND GAVE TWO CARDS TO MR. STEFANIUK FOR SIGNATURE OF HIM AND HIS WIFE. HE WENT DOWNSTAIRS WHERE MRS. STEFANIUK WAS WASHING AND HER EVIDENCE IS THAT SHE ASKED HER HUSBAND TO SIGN THE CARD FOR HER AS HER HANDS WERE WET. HER HUSBAND DID SO AND WITH THE TWO CARDS WENT OUT OF THE HOUSE AND GAVE THE CARDS AND THE SUM OF \$2.00 TO MR. RIVERA WHO SAID THAT MR. STEFANIUK TOLD HIM THAT "THE CARDS ARE SIGNED AND HERE IS THE MONEY." MR. RIVERA GAVE HIM ONE RECEIPT AND HE WALKED AWAY. THE CARD FILED BY THE APPLICANT WITH THE BOARD PURPORTING TO BE THE APPLICATION FOR MRS. STEFANIUK WAS NOT WITNESSED BUT MR. RIVERA'S SIGNATURE APPEARS THEREON AS COLLECTOR. THIS CONFIRMS HIS EVIDENCE IN THAT RESPECT.

5. THE APPLICANT ALSO FILED AN APPLICATION FOR MEMBERSHIP CARD WITH RESPECT TO M. MARTINIZEN. HIS EVIDENCE WAS THAT HE HAD SIGNED ONE CARD IN PENCIL BUT WAS TOLD THAT THIS WAS NOT PROPER AND WAS ASKED TO SIGN ANOTHER CARD WHICH IS THE ONE WHICH WE ARE HERE CONSIDERING. HE SAID HE SIGNED THE RECEIPT PORTION OF THE CARD BUT DID NOT SIGN AT THE BOTTOM OF THE APPLICATION WHERE THERE IS PROVISION FOR THE APPLICANT'S SIGNATURE AND ALTHOUGH A SIGNATURE DOES APPEAR ON THE CARD IN THIS PLACE THIS WAS NOT HIS AND HE DID NOT KNOW WHO HAD SIGNED HIS NAME THERE. VINCE DEFARNO WAS THE ONLY PERSON PRESENT WHEN HE SIGNED THE CARD WHICH WAS AT HIS PLACE OF WORK ON DECEMBER 12TH, 1968. HE PAID THE SUM OF \$1.00 AT THAT TIME AND GAVE THE CARD TO MR. DEFARNO. HE SAID THAT HE KNEW THIS

WAS A UNION CARD WHICH HE INTENDED TO SIGN AND JOIN THE UNION. MR. DEFARNO TESTIFIED THAT HE GAVE MARTINIZEN A CARD TO SIGN WHICH HE DID IN PENCIL AND WAS GIVEN \$1.00 AT THAT TIME. DEFARNO TOOK THIS TO RIVERA WHO WAS OUTSIDE THE PLANT AND HE TOLD HIM THAT A CARD MADE OUT IN PENCIL WAS NO GOOD AND ASKED HIM TO GET IT REDONE IN INK. THEN DEFARNO SAID HE GAVE HIM ANOTHER CARD WHICH WHEN COMPLETED COULD NOT BE READ SO THIS ONE WAS RIPPED UP AND A THIRD GIVEN TO HIM ON WHICH MARTINIZEN PRINTED HIS NAME IN TWO PLACES, ON THE FACE OF THE CARD AND ON THE RECEIPT. THEN DEFARNO SAID THAT HE SAW THAT THE NAME WAS DIFFERENT ON THE CARD AND HE GAVE IT TO SOMEONE ELSE TO HAVE MARTINIZEN COMPLETE PROPERLY. HE LEFT FOR A SHORT WHILE AND ON RETURNING, THIS OTHER PERSON GAVE HIM THE CARD IN THE FORM AS FILED WITH THE BOARD. MR. RIVERA STATED THAT HE WAS LOOKING IN THE WINDOW OF THE PLANT AND SAW MARTINIZEN SIGN A CARD GIVEN TO HIM BY DEFARNO AND ALSO SAW HIM PAY \$1.00 TO DEFARNO. THIS CARD WAS IN PENCIL AND HE DIRECTED DEFARNO TO OBTAIN ANOTHER IN INK WHICH HE DID. MR. RIVERA SIGNED THIS CARD AS WITNESS AND ALSO AS COLLECTOR AND GAVE A RECEIPT TO MARTINIZEN. HE SAID HE COULD NOT LOCATE THE CARD WHICH WAS SIGNED BY MARTINIZEN IN PENCIL. THE PRESENT CARD WAS IN THE FORM IT NOW IS WHEN IT WAS RETURNED TO RIVERA.

6. THE BOARD, IN MANY PREVIOUS DECISIONS, HAS STATED THAT SINCE THE BOARD MUST RELY TO A GREAT EXTENT ON EVIDENCE NOT SUBJECT TO THE EXAMINATION OF THE PARTIES TO THE PROCEEDINGS IT MUST BE VERY CIRCUMSPET IN ACCEPTING IT AND THERE IS A HEAVY ONUS ON AN APPLICANT TO ENSURE THAT SUCH EVIDENCE IS TRUE AND ACCURATE IN ALL RESPECTS. SHOULD THE BOARD THROUGH ITS EXAMINATION FIND OTHERWISE THEN SUCH FINDINGS MUST WEIGH HEAVILY AGAINST THE APPLICANT. THE ADOPTION AND USE OF THE BOARD'S FORM 8 DECLARATION REFLECTS THE BOARD'S CONCERN IN THESE MATTERS. IN THE PRESENT CASE MR. RIVERA, AS BUSINESS AGENT, EXECUTED THE FORM 8 DECLARATION, PARAGRAPH 3 THEREOF IS AS FOLLOWS:

(WHERE THE DOCUMENTARY EVIDENCE CONSISTS IN
PART OF RECEIPTS OR OTHER ACKNOWLEDGMENTS OF
THE PAYMENT ON ACCOUNT OF DUES OR INITIATION
FEES). ON THE BASIS OF MY PERSONAL KNOWLEDGE
AND INQUIRIES THAT I HAVE MADE, I STATE THAT
THE PERSONS WHOSE NAMES APPEAR ON THE RECEIPTS
OR OTHER ACKNOWLEDGMENTS OF THE PAYMENT ON
ACCOUNT OF DUES OR INITIATION FEES ARE THE
PERSONS WHO ACTUALLY COLLECTED THE MONEYS
PAID ON ACCOUNT OF DUES OR INITIATION FEES
AND THAT EACH MEMBER, ON WHOSE BEHALF A

RECEIPT OR AN ACKNOWLEDGMENT OF PAYMENT IS SUBMITTED HAS PERSONALLY PAID IN MONEY THE AMOUNT SHOWN THEREON ON HIS OWN BEHALF TO THE PERSON WHOSE NAME APPEARS ON HIS RECEIPT OR ACKNOWLEDGMENT OF PAYMENT AS COLLECTOR, EXCEPT IN THE FOLLOWING INSTANCES:

SEE IN THIS REGARD THE COLLINGWOOD SHIPYARDS CASE, O.L.R.B. MONTHLY REPORT, JUNE 1967, P. 246.

7. MR. RIVERA SIGNED BOTH CARDS AS COLLECTOR AND FROM THE EVIDENCE IT IS CLEAR THAT HE WITNESSED THE PAYMENT OF THE MONIES AND RECEIVED THEM. IN THE CASE OF STEFANIUK WHICH CONCERNED A HUSBAND AND WIFE HE ACCEPTED THE MONEY FROM THE HUSBAND AS BEING PAYMENT FOR BOTH AND IN THESE PARTICULAR CIRCUMSTANCES WE FIND NOTHING UNTOWARD IN HIM DOING SO. HE WAS TOLD BY MR. STEFANIUK WHEN HE HANDED THE CARDS AND THE MONEY TO HIM OUTSIDE HIS HOUSE TO THE EFFECT THAT THE CARDS WERE SIGNED AND THE MONEY ACCOMPANIED THEM. HE THEN ISSUED THE RECEIPTS BUT DID NOT SIGN THE CARD AS WITNESS AS HE DID NOT IN FACT SEE MRS. STEFANIUK SIGN NOR DID MR. DEFARNO WHO WAS IN THE HOUSE, BUT NOT DOWNSTAIRS WHERE THE CARDS WERE COMPLETED. AS TO MARTINIZEN'S CARD, MR. RIVERA SAID HE WITNESSED THE PAYMENT OF THE MONEY AND THE SIGNATURE OF THE CARD, BUT IT IS CLEAR THAT WHAT HE WITNESSED WAS ONLY THE CARD MADE OUT IN PENCIL AND NOT THAT PRESENTLY BEFORE US. THE EVIDENCE IS AT THE LEAST VERY CONFUSED AS TO THE CIRCUMSTANCES SURROUNDING THE SIGNING OF THIS CARD AND WE FIND THE EVIDENCE OF MR. DEFARNO TOTALLY UNRELIABLE IN THIS REGARD. THERE IS NO SATISFACTORY EXPLANATION FROM EITHER DEFARNO OR MARTINIZEN AS TO HOW THE SIGNATURE APPEARING ON THE APPLICATION WAS AFFIXED AND WE ARE NOT SATISFIED TO ACCEPT THIS CARD AS A VALID APPLICATION FOR MEMBERSHIP IN THE APPLICANT ALBEIT MR. MARTINIZEN AFFIRMED THAT HE INTENDED TO JOIN. THE EVIDENCE OF MEMBERSHIP MUST BE IN PROPER FORM FOR THE BOARD TO ACCEPT IT IN THESE MATTERS. WHILE NOT ACCEPTING THIS EVIDENCE OF MEMBERSHIP, THE QUESTION REMAINS WHETHER ALL OF THE REMAINING EVIDENCE SUBMITTED BY THE APPLICANT IS RELIABLE. IN THE WEBSTER AIR EQUIPMENT CASE, 1958 VOL. 1, C.L.L.C. PARAGRAPH 18,110, THE BOARD SAID IN PART AS FOLLOWS:

... IN DEALING WITH THIS SITUATION, THE BOARD HAS MADE A DISTINCTION BETWEEN TWO TYPES OF CASES: (1) WHERE THE ACTION IMPUGNED IS THAT OF A RESPONSIBLE OFFICER OR OFFICIAL OF A UNION, AND (11) WHERE THE ACTION IS THAT OF A SUPPORTER OR CANVASSER ON BEHALF OF AN APPLICANT WHO OCCUPIES AN INFERIOR OFFICE OR NO OFFICE IN THE UNION. IN SO FAR AS THE FIRST OF THESE IS CONCERNED, THE BOARD SAID IN THE RCA VICTOR COMPANY CASE, (1953) CCH CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER, PAR. 17,076, C.L.C. 76-412, THAT, EVEN WHERE ONLY A

SINGLE CARD IS DEFECTIVE AND IT IS SUBMITTED WITH THE KNOWLEDGE OF SUCH RESPONSIBLE OFFICER OR OFFICIAL, "THE BOARD MAY COME TO THE CONCLUSION THAT IT CANNOT PLACE RELIANCE ON ANY OF THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE UNION". WHERE THE IRREGULARITY RELATES TO EVIDENCE OF MEMBERSHIP PROCURED BY A PERSON OF LESSER RANK IN THE UNION ORGANIZATION, THE BOARD HAS TAKEN THE POSITION THAT THE CARD IN RESPECT OF WHICH THE IRREGULARITY IS ESTABLISHED IS DISALLOWED AND THE WEIGHT TO BE GIVEN TO THE REMAINING EVIDENCE OF MEMBERSHIP WILL DEPEND ON THE NATURE OF THE IRREGULARITY AND THE EXTENT TO WHICH THE OBJECTIONABLE PRACTICE WAS RESORTED TO IN THE SIGNING UP OF MEMBERS.

8. IT IS CLEAR THAT THE PERSON COMPLETING FORM 8 ON BEHALF OF AN APPLICANT HAS THE RESPONSIBILITY OF INVESTIGATING THE MATTERS SET OUT IN FORM 8 SO THAT THE BOARD IS NOT MISLED IN ANY WAY AND FAILURE TO MAKE FULL DISCLOSURE OF ALL THE MATERIAL FACTS MAY RESULT IN SERIOUS REPERCUSSIONS TO THE APPLICANT WITH RESPECT TO ITS APPLICATION. IN THE INSTANT CASE ALTHOUGH THE CIRCUMSTANCES OF MR. MARTINIZEN'S APPLICATION WAS FRAUGHT WITH ERRORS AND CONTRADICTIONS, MR. RIVERIA, ACCORDING TO HIS TESTIMONY WHICH WE ACCEPT, DID AT LEAST SEE HIM PAY THE SUM OF \$1.00 AND SIGN A CARD. WHETHER NECESSARY OR NOT, HE DIRECTED DEFARNO TO OBTAIN A NEW CARD SIGNED IN INK AND ACCEPTED WITHOUT FURTHER INQUIRY THAT CARD WHEN RETURNED TO HIM BY DEFARNO. IT WAS DEFARNO'S CLEAR DUTY TO DISCLOSE THE CIRCUMSTANCES SURROUNDING THE SIGNING OF THIS CARD WHICH HE DID NOT DO UNTIL THE HEARING AT THE BOARD BUT RIVERA, WE FIND, WAS ENTITLED IN THESE PARTICULAR CIRCUMSTANCES TO ACCEPT THE CARD AT THAT TIME AS VALID AND THEREFORE WE FIND THAT RIVERA DID NOT ATTEMPT TO MISLEAD THE BOARD IN ANY WAY. DEFARNO, AS VICE PRESIDENT OF THE APPLICANT, HAS A DUTY OF CARE TO THE APPLICANT AND TO OTHERS WITH WHOM HE DEALS ON ITS BEHALF AND FOR THE REASONS SET OUT ABOVE WE DISALLOW THE EVIDENCE OF MEMBERSHIP SUBMITTED ON BEHALF OF MARTINIZEN. HAD WE FOUND THAT DEFARNO WAS INVOLVED WITH ANY OF THE OTHER APPLICATIONS FOR MEMBERSHIP SUBMITTED TO THE BOARD, HAVING REGARD TO THE NATURE OF THE IRREGULARITIES PERTAINING TO MARTINIZEN'S MEMBERSHIP CARD, WE WOULD NOT HAVE GIVEN WEIGHT TO THAT EVIDENCE.

9. HAVING REGARD TO THE FOREGOING THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON FEBRUARY 6, 1969 THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER

SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

10. A REPRESENTATION VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

11. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

12. THE MATTER IS REFERRED TO THE REGISTRAR.

DISSENT OF J.E.C. ROBINSON: MAY 20, 1969.

MY DISSENT, WHICH I REGISTER HEREIN, MAY BE BROKEN DOWN INTO THREE SEPARATE AREAS AS HEREINAFTER SET FORTH.

1. PRIOR TO THE HEARING OF THIS APPLICATION, THE APPLICANT, OPTICAL & PLASTIC TECHNICIANS & ALLIED WORKERS UNION, LOCAL 67 OF U.H.C. & M.W.I.U. - C.L.C., WAS ADVISED BY THE REGISTRAR THAT IT MUST BE PREPARED AT THE HEARING TO SATISFY THE BOARD AS TO ITS STATUS VIZ. THAT IT WAS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

THE WITNESS CALLED BY THE APPLICANT IN AN ATTEMPT TO PROVE SUCH STATUS ADVISED THE BOARD THAT THE APPLICANT WAS CHARTERED UNDER THE AUTHORITY OF THE CONSTITUTION OF THE UNITED HATTERS, CAP AND MILLINERY WORKERS AND IN SUPPORT OF SUCH POSITION ENTERED AS AN EXHIBIT SUCH CONSTITUTION (EXHIBIT #4 IN THE EVIDENCE).

MAY I NOW EXAMINE SEVERAL OF THE ARTICLES OF THE CONSTITUTION UNDER WHICH THE PARENT UNION PURPORTEDLY CREATED THE LOCAL WHICH IS THE APPLICANT IN THIS CASE. IN DOING SO I SET FORTH THOSE PORTIONS OF THE CONSTITUTION WHICH TO ME ARE RELEVANT IN MY DETERMINATION AS TO WHETHER OR NOT THE PARENT UNION HAS THE RIGHT TO CHARTER A LOCAL WHICH PURPORTS TO TAKE AS MEMBERS PERSONS WHO ARE EMPLOYED IN OPTICAL WORK.

"ARTICLE I TITLE, OBJECTS AND JURISDICTION

SEC. 2 "THE JURISDICTION OF THE UNITED HATTERS, CAP AND MILLINERY WORKERS INTERNATIONAL UNION SHALL EXTEND OVER ALL WORKERS IN THE UNITED STATES AND CANADA ENGAGED IN THE PRODUCTION OR DISTRIBUTION OF MEN'S, LADIES, CHILDREN'S, AND INFANTS' HEADWEAR, SUCH AS MEN'S AND BOYS' FELT HATS; MEN'S AND BOY'S STRAW AND PANAMA HATS; ALL TRIMMINGS, LININGS AND OTHER MATERIALS AND ITEMS USED ON AND FOR

HATS; FELT HAT BODIES AND HOODS MADE WHOLLY OR IN PART FOR MEN'S, WOMEN'S, CHILDREN'S AND INFANTS' HATS; MEN'S AND BOYS SEWED HATS OF ALL MATERIALS AND DESCRIPTION; MEN'S, CHILDREN'S AND INFANTS' CAPS OF ALL MATERIALS AND DESCRIPTION; LADIES', CHILDREN'S AND INFANTS' HATS OF ALL MATERIALS AND DESCRIPTION.

THE JURISDICTION SHALL ALSO EXTEND OVER ALL WORKERS ENGAGED IN THE PREPARATION OF FUR MATERIALS FOR WORKING FELT HAT BODIES; RENOVATING AND REMAKING FELT, STRAW AND CLOTH HATS; MEN'S AND BOYS' SILK AND OPERA HATS AND HARVEST HATS; THE MAKING AND PRINTING OF ACCESSORIES USED IN THE MANUFACTURE OF HATS, SUCH AS LININGS AND SWEATBANDS; THE MAKING OF WOOD BLOCKS, PLASTER BLOCKS, AND METAL DIES FOR THE BLOCKING AND SHAPING OF HATS AND CAPS; MAINTENANCE EMPLOYEES OF HAT AND CAP FACTORIES; OFFICE EMPLOYEES IN HAT AND CAP FACTORIES AND OFFICE EMPLOYEES OF HAT AND CAP DISTRIBUTORS; AND WORKERS ENGAGED IN THE SERVICING OF MACHINERY USED IN HAT AND CAP FACTORIES."

SEC. 3 THE OBJECT OF THIS INTERNATIONAL UNION SHALL BE TO UNITE IN ONE ORGANIZATION ALL WORKERS, MEN AND WOMEN, ELIGIBLE FOR MEMBERSHIP;.....".

SEC. 5 THE INTERNATIONAL UNION SHALL HAVE THE SOLE POWER TO ISSUE CHARTERS TO LOCAL UNIONS....".

SEC. 6 A GROUP OF SEVEN (7) OR MORE WORKERS IN ANY BRANCH OF THE TRADE SPECIFIED IN SECTION 2 OF THIS ARTICLE, IN ANY LOCALITY, MAY ORGANIZE THEMSELVES INTO A LOCAL UNION AND AFFILIATE WITH THE UNITED HATTERS, CAP AND MILLINERY WORKERS INTERNATIONAL UNION SUBJECT TO THE PROVISIONS OF THIS CONSTITUTION.

SEC 7 THE AFFILIATION OF A LOCAL UNION SHALL BE EVIDENCED BY THE ISSUANCE OF A CHARTER GRANTED BY THE GENERAL EXECUTIVE BOARD. ALL CHARTERS SHALL BE ISSUED ON THE FOLLOWING CONDITIONS ONLY:

- (a) THE CHARTER AND OUTFIT GRANTED TO A LOCAL UNION SHALL ALWAYS REMAIN THE PROPERTY OF THE U.H.C. & M.W.I.U. TO BE USED BY THE LOCAL UNION AS LONG AS SUCH LOCAL UNION AND ITS MEMBERS COMPLY WITH THE CONSTITUTION, BY-LAWS, RULES AND REGULATIONS OF THE U.H.C. & M.W.I.U.

ARTICLE XII LOCAL UNIONS

SEC. 1 A LOCAL UNION MAY BE ORGANIZED BY NOT LESS THAN SEVEN (7) WORKERS ENGAGED IN THE SAME BRANCH OF ANY OF THE TRADES UNDER THE JURISDICTION OF THE U.H.C. & M.W.I.U. IN ACCORDANCE WITH THIS CONSTITUTION.....".

ARTICLE XVI
MEMBERSHIP

SEC. 1 ANY WORKER IN ANY OF THE CRAFTS UNDER THE JURISDICTION OF THE U.H.C. & M.W.I.U., MALE OR FEMALE, IRRESPECTIVE OF CREED, COLOR, OR NATIONAL ORIGIN, MAY BECOME ELIGIBLE FOR MEMBERSHIP IN THE U.H.C. & M.W.I.U.

SEC. 2 A WORKER DESIRING TO JOIN THE U.H.C. & M.W.I.U. MUST APPLY FOR MEMBERSHIP TO THE SECRETARY OF THE LOCAL UNION OF HIS BRANCH OF TRADE. THE APPLICANT MUST BE A PRACTICAL WORKER IN THE LINE OF WORK OVER WHICH THE LOCAL UNION HAS JURISDICTION, OR ACTUALLY EMPLOYED IN SUCH WORK AT THE TIME OF MAKING APPLICATION FOR MEMBERSHIP.

SEC. 3 ALL APPLICANTS FOR MEMBERSHIP IN ANY LOCAL OF THE U.H.C. & M.W.I.U. SHALL FILL OUT AN OFFICIAL APPLICATION PROVIDED FOR THAT PURPOSE..... AND SIGN A PLEDGE TO ABIDE BY THE CONSTITUTION OF THE U.H.C. & M.W.I.U.

IT IS MY OPINION, THEREFORE THAT UNDER THE TERMS OF THE CONSTITUTION, THERE IS NO RIGHT GIVEN TO CREATE A LOCAL UNION TO SERVICE EMPLOYEES ENGAGED IN THE OPTICAL INDUSTRY AND ON THIS BASIS, I WOULD HAVE FOUND THAT THE APPLICANT HAD NOT PROVEN ITS STATUS BEFORE THIS BOARD, AND THAT THE CREATION OF THIS LOCAL WAS ULTRA VIRES THE CONSTITUTION.

II. IT IS MY SECOND POSITION THAT EVEN IF THE CREATION OF THIS APPLICANT LOCAL WAS NOT ULTRA VIRES THE CONSTITUTION OF THE UNITED HATTERS, CAP AND MILLINERY WORKERS INTERNATIONAL UNION, THE APPLICANT DOES NOT HAVE THE RIGHT TO BE CERTIFIED AS BARGAINING AGENT FOR PERSONS EMPLOYED IN THE OPTICAL INDUSTRY. SO FAR AS WE ARE INFORMED AT THE HEARING, THE CONSTITUTION OF THE LOCAL, AS IT RELATES TO JURISDICTION AND MEMBERSHIP, IS THE SAME AS THAT OF THE INTERNATIONAL UNION.

ARTICLE I, SECTION 2 HAS BEEN SET OUT EARLIER IN THIS DISSENT. CLEARLY THE PERSONS TO WHOM THIS APPLICATION IS DIRECTED DO NOT FALL WITHIN ANY OF THE ABOVE CLASSIFICATIONS. WITHOUT EVIDENCE TO THE CONTRARY I FIND THAT THERE IS AN EXPRESS EXCLUSION IN THE CONSTITUTION WITH RESPECT TO THE CLASSIFICATIONS OF EMPLOYEES INVOLVED IN THIS APPLICATION. THE BOARD'S POLICY IN REGARD TO THIS SITUATION IS CLEARLY ENUNCIATED IN THE METROPOLITAN LIFE INSURANCE COMPANY CASE, O.L.R.B. MONTHLY REPORT, AUGUST 1967, PAGE 437 AND CAROUSEL INN OF LONDON LIMITED CASE, BOARD FILE NO. 15496-68-R. SEE THE METROPOLITAN LIFE INSURANCE COMPANY CASE (SUPRA) IN PART AS FOLLOWS:-

"13. UNQUESTIONABLY IN CONSIDERING THE "ELIGIBILITY" PROBLEM, THE BOARD HAS TAKEN INTO CONSIDERATION THE CONSTITUTION OF THE PARTICULAR UNION IN QUESTION. IT IS ONE OF THE FACTORS WHICH THE BOARD LOOKS AT IN DETERMINING WHETHER A PERSON IS A MEMBER OF THE UNION. THUS, IF THERE IS A CLEAR-CUT PROHIBITION OR EXPRESS EXCLUSION WITH RESPECT TO A CERTAIN CLASS OF PERSONS (SEE CANADIAN CANNERS LIMITED CASE, O.L.R.B. MONTHLY REPORT, MAY 1965, P. 126, ALDERSHOT CONTRACTORS EQUIPMENT RENTAL LIMITED CASE, O.L.R.B. MONTHLY REPORT, JUNE 1965, P. 170), THE BOARD WILL REFUSE TO CERTIFY AN APPLICANT UNION IF THE CLASS OF PERSONS IN QUESTION IS TO BE INCLUDED IN THE BARGAINING UNIT WHICH THE BOARD FINDS TO BE APPROPRIATE FOR COLLECTIVE BARGAINING. THE REASON FOR THIS IS THAT A TRADE UNION IS CERTIFIED AS BARGAINING AGENT FOR ALL EMPLOYEES IN THE BARGAINING UNIT WHICH THE BOARD FINDS TO BE APPROPRIATE AND, IF THE UNION IN QUESTION WILL NOT ADMIT TO MEMBERSHIP ALL OF THE PERSONS FOR WHOM IT WOULD BE CERTIFIED TO REPRESENT, THE BOARD WILL REFUSE CERTIFICATION IN SUCH CIRCUMSTANCES. TO THAT EXTENT AND FOR THAT PURPOSE, THEN, THE BOARD DOES HAVE REGARD TO UNION CONSTITUTIONS."

"15. FURTHERMORE, EVEN WHERE THERE IS AN EXPRESS EXCLUSION IN A UNION CONSTITUTION, IT IS IMPLICIT IN THE CANADIAN CANNERS LIMITED CASE, SUPRA, THAT THE INTERPRETATION PLACED ON THE CONSTITUTION BY THE UNION'S RESPONSIBLE OFFICERS OR PROOF OF UNEQUIVOCAL PAST PRACTICES OF ADMISSION AS MEMBERS OF PERSONS COMING WITHIN THE EXCLUSIONARY CLASS WILL OVERCOME THE LANGUAGE OF THE CONSTITUTION. THERE IS NO DOUBT IN OUR MINDS THAT THIS ACCURATELY REFLECTS BOARD POLICY AND, FURTHER, THAT THE HIGH SCHOOL BOARD OF EASTVIEW CASE IS IN LINE WITH THIS POLICY."

WITHOUT MAKING ANY COMMENT ON MY AGREEMENT WITH THIS POLICY, IT IS THE POLICY WHICH THE BOARD HAS FOLLOWED. ACCORDINGLY, ON THIS POLICY WITH RESPECT TO MEMBERSHIP QUALIFICATIONS, IN THE ABSENCE OF EVIDENCE OF PAST PRACTICE ON THE PART OF THE APPLICANT OF TAKING SUCH EMPLOYEES INTO MEMBERSHIP, I MUST FIND THAT THE APPLICANT CANNOT ACCEPT INTO MEMBERSHIP THE EMPLOYEES OF THE RESPONDENT FOR WHOM IT IS SEEKING CERTIFICATION IN THIS APPLICATION. NEITHER DO I FEEL THAT THIS CASE SHOULD BE USED AS EVIDENCE IN FUTURE APPLICATIONS OF A PRACTICE OF TAKING SUCH EMPLOYEES INTO MEMBERSHIP.

ON THIS BASIS, TOO, I WOULD HAVE DISMISSED THE APPLICATION.

III. HAVING EARLIER DEALT WITH THE FIRST TWO AREAS OF MY DISSENT, IT IS NOT MY INTENTION TO GIVE LENGTHLY REASONS AS TO WHY I WOULD HAVE DISMISSED THIS APPLICATION ON THE BASIS OF OUR INVESTIGATION INTO "NON-PAY" AND "NON-SIGN" CONCERNING THE EMPLOYEES MARTINIZEN AND STEFANIUK.

IT WILL SUFFICE THAT I SAY THAT IN THE CASE OF MARTINIZEN THERE APPEARED TO ME TO BE A CONSCIOUS ATTEMPT BY SOMEBODY TO ATTEMPT TO DUPLICATE THE SIGNATURE OF MARTINIZEN, EVEN THOUGH HIS EVIDENCE WAS THAT HE DID NOT SIGN THE APPLICATION CARD TENDERED IN EVIDENCE.

WITH RESPECT TO THE EMPLOYEE STEFANIUK, THE BUSINESS AGENT OF THE PURPORTED LOCAL MADE THE FOLLOWING FORM 8 DECLARATION, PARAGRAPH 3 OF WHICH IS AS FOLLOWS:-

"(WHERE THE DOCUMENTARY EVIDENCE CONSISTS IN PART OF RECEIPTS OR OTHER ACKNOWLEDGMENTS OF THE PAYMENT ON ACCOUNT OF DUES OR INITIATION FEES)

ON THE BASIS OF MY PERSONAL KNOWLEDGE AND INQUIRIES THAT I HAVE MADE, I STATE THAT THE PERSONS WHOSE NAMES APPEAR ON THE RECEIPTS OR OTHER ACKNOWLEDGMENTS OF THE PAYMENT ON ACCOUNT OF DUES OR INITIATION FEES ARE THE PERSONS WHO ACTUALLY COLLECTED THE MONEYS PAID ON ACCOUNT OF DUES OR INITIATION FEES AND THAT EACH MEMBER, ON WHOSE BEHALF A RECEIPT OR ACKNOWLEDGMENT OF PAYMENT IS SUBMITTED HAS PERSONALLY PAID IN MONEY THE AMOUNT SHOWN THEREON ON HIS OWN BEHALF TO THE PERSON WHOSE NAME APPEARS ON HIS RECEIPT OR ACKNOWLEDGMENT OF PAYMENT AS COLLECTOR, EXCEPT IN THE FOLLOWING INSTANCES."

THERE IS ABSOLUTELY NO DOUBT ON THE EVIDENCE THAT MRS. STEFANIUK DID NOT PERSONALLY PAY IN MONEY THE AMOUNT SHOWN ON HER OWN BEHALF TO THE PERSON WHOSE NAME APPEARS ON HER RECEIPT OR ACKNOWLEDGMENT OF PAYMENT AS COLLECTOR. THE QUESTION, THEREFORE, IS NOT WHETHER A HUSBAND MAY PAY MONEY ON BEHALF OF A WIFE, BUT WHETHER THE FORM 8 DECLARATION IS ACCURATE. IN MY SUBMISSION, THERE IS NO DOUBT THAT IT IS NOT.

IN SUMMARY THEREFORE, I WOULD HAVE DISMISSED THE APPLICATION BECAUSE:-

- (1) THE PURPORTED CREATION OF THE APPLICANT IS ULTRA VIRES THE CONSTITUTION OF THE INTERNATIONAL UNION.
- (2) IN THE ALTERNATIVE, THE ATTEMPTS TO BRING OPTICAL WORKERS INTO THIS CRAFT UNION AND THE EVIDENCE IN SUPPORT THEREOF, FLIES DIRECTLY IN THE FACE OF THE METROPOLITAN LIFE DECISION.
- (3) THE DOCUMENTARY EVIDENCE SUBMITTED IN SUPPORT OF THE APPLICATION IS SUCH THAT IT WOULD, IN MY OPINION, DICTATE THE DISMISSAL OF THE APPLICATION.

15629-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. CANADIAN MOTOR LAMP COMPANY, LIMITED (RESPONDENT).

BEFORE: H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS P.J. O'KEEFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: WEBSTER CORNWALL, JOSEPH C. MALONEY FOR THE APPLICANT; JAMES N. BARTLET Q.C., K.R. MOORE, HUGH W. GREEN, J.H. FLOOD FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 20, 1969.

• • •

2. FOLLOWING SERVICE OF THE REPORT OF THE EXAMINER DATED MARCH 21ST, 1969 AND THE SUPPLEMENTARY REPORT OF THE EXAMINER DATED APRIL 2ND 1969, A HEARING WAS HELD TO CONSIDER THE REPRESENTATIONS OF THE PARTIES RELATING TO THE REPORTS.

3. THE DISPUTED CLASSIFICATIONS WHICH AT THE FIRST HEARING THE RESPONDENT SOUGHT TO EXCLUDE FROM THE BARGAINING UNIT ARE, NURSES, FIRST AID ATTENDANTS, TIME STUDY ANALYST, COST AND BUDGET ANALYST AND DRAFTSMEN. DEALING FIRSTLY WITH THE CLASSIFICATION OF NURSES AND FIRST AID ATTENDANTS IT APPEARS FROM THE EXAMINER'S REPORT THAT THE RESPONDENT EMPLOYS PERSONS CLASSIFIED AS FIRST AID ATTENDANTS AND NOT AS "NURSES" AND IT IS THE FORMER CLASSIFICATION THAT THE RESPONDENT SEEKS TO EXCLUDE. MRS. DONNA CHARLES AND MRS. GERALDINE CORMICAN BOTH WITHIN THIS CLASSIFICATION TESTIFIED IN THIS MATTER. IT IS CLEAR THAT MRS. CHARLES IS EMPLOYED IN TWO CAPACITIES, ALTHOUGH HER PRIMARY FUNCTION WAS FIRST AID, (SHE IS

A REGISTERED NURSING ASSISTANT), HER OFFICE IS ADJACENT TO THE PERSONNEL DEPARTMENT AND SPENDS HALF HER TIME IN PERSONNEL WORK. SHE ALSO SAID THAT MRS. CORMICAN DOES SOME SUCH WORK DURING HER SHIFT WHICH IS THE AFTERNOON SHIFT. BOTH OF THESE EMPLOYEES REPORT TO THE PERSONNEL MANAGER. THE CABINETS CONTAINING PERSONAL FILES ARE LEFT OPEN AT NIGHT SO THAT THE NIGHT FIRST AID ATTENDANT MAY HAVE ACCESS TO THEM. MRS. CORMICAN STATED THAT IT WAS OCCASIONALLY NECESSARY FOR HER TO CHECK AN EMPLOYEE'S PERSONNEL FILE IN THE PERSONNEL OFFICE BUT SHE SPENDS THE MAJORITY OF HER TIME IN THE FIRST AID OFFICE, BUT DID OCCASIONAL TYPING FOR THE PERSONNEL OFFICE. THIS TYPE OF SITUATION WAS DEALT WITH BY THE BOARD IN THE CASE OF UNITED STEELWORKERS OF AMERICA AND FERRANTI-PACKARD, O.L.R.B. MONTHLY REPORT SEPTEMBER 1968 AT PAGE 572, WHERE A PLANT NURSE WHO SPENT ABOUT ONE-QUARTER OF HER TIME IN THE PERSONNEL OFFICE CARRYING OUT PERSONNEL WORK AND WAS EXCLUDED FROM A BARGAINING UNIT OF OFFICE, CLERICAL AND TECHNICAL EMPLOYEES. THE INSTANT MATTER ON THE EVIDENCE OF MRS. CHARLES IS MUCH STRONGER THAN THAT AND ALTHOUGH MRS. CORMICAN DOES NOT APPEAR TO HAVE QUITE AS MUCH TIME TAKEN UP BY PERSONNEL WORK, CERTAINLY SUCH WORK IS PART OF HER RESPONSIBILITIES AND SHE HAS ACCESS TO PERSONNEL RECORDS IN THE PERSONNEL OFFICE. FOLLOWING THE FERRANTI-PACKARD CASE (SUPRA) IN THESE CIRCUMSTANCES WE THEREFORE FIND THAT FIRST AID ATTENDANTS ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

4. WITH RESPECT TO THE REMAINING CLASSIFICATIONS IN DISPUTE THE RESPONDENT SUBMITTED THAT SHOULD THE BOARD NOT FIND THAT THEY SHOULD BE EXCLUDED FROM THE BARGAINING UNIT ON THE EVIDENCE NOW BEFORE IT, THAT A FURTHER EXAMINATION SHOULD BE HELD TO PERMIT FURTHER QUESTIONS TO BE DIRECTED TO THE WITNESSES AS TO THEIR MANAGERIAL FUNCTIONS. IN ITS REPLY TO THIS APPLICATION THE RESPONDENT INDICATED THAT ITS OBJECTIONS WERE BASED ON EMPLOYEES WITH ACCESS TO CONFIDENTIAL COMPANY INFORMATION. THE BOARD IN ITS DECISION DATED FEBRUARY 21ST, 1969 DIRECTED THE EXAMINER TO INQUIRE INTO THE DUTIES AND RESPONSIBILITIES OF THESE EMPLOYEES WITHOUT ANY RESTRICTION AS TO THE AREA THAT COULD BE INQUIRED INTO. FURTHERMORE, BOTH PARTIES HAD FULL OPPORTUNITY TO EXAMINE AND CROSS-EXAMINE AND CALL ANY OTHER EVIDENCE THEY DESIRED IN THIS REGARD AT THE EXAMINER'S MEETING. THE EVIDENCE BEFORE THE BOARD APPEARS TO BE SUBSTANTIAL AND DIRECTED TO THE ISSUES AND WHICH WAS THE SUBJECT OF THE SECOND HEARING AT THE BOARD REGARDING THE EXAMINER'S REPORTS. IT IS OUR VIEW IN THESE CIRCUMSTANCES THAT NO PURPOSE WOULD BE SERVED IN ACCEDING TO THE RESPONDENT'S REQUEST AND IT IS ACCORDINGLY DENIED.

5. ON THE EVIDENCE WE ARE NOT SATISFIED THAT DONALD C. HUNTER, DRAFTSMAN, IS EMPLOYED BY THE RESPONDENT IN A CONFIDENTIAL CAPACITY IN MATTERS DEALING WITH LABOUR RELATIONS NOR EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND WE FIND THAT HE IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT DESCRIBED BELOW.

6. IT IS CLEAR FROM THE EVIDENCE OF BEN PELKINEN, COST AND BUDGET ANALYST, THAT HE EXERCISES INDEPENDENT DISCRETION AND A CERTAIN DEGREE OF DECISION MAKING CONSISTENT WITH EXERCISING MANAGERIAL FUNCTIONS. FURTHER HE DOES HAVE ACCESS TO CONFIDENTIAL MATERIAL RELATING TO LABOUR RELATIONS AND HAS BEEN, AMONG OTHER THINGS, INVOLVED IN THE FIRING AND LAYING OFF OF EMPLOYEES AND HAS RECOMMENDED SALARY INCREASES. HE REPORTS TO THE CONTROLLER AND IN THE ABSENCE OF THE CHIEF ACCOUNTANT OR CONTROLLER HAD ATTENDED OCCASIONAL (MANAGEMENT) MEETINGS. WE ARE SATISFIED THEREFORE THAT BEN PELKINEN IS EMPLOYED BY THE RESPONDENT IN A CONFIDENTIAL CAPACITY RELATING TO LABOUR RELATIONS AND EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B).

7. KEITH FRANCIS EVANS, TIME STUDY ANALYST, WAS EXAMINED AND IS EMPLOYED MAINLY TO DO TIME STUDIES IN THE PLANT AND REPORT ON DIRECT AND INDIRECT LABOUR, AND REPORTS TO THE INDUSTRIAL ENGINEER. IT IS CLEAR THAT HIS FUNCTIONS ARE THOSE OF A REPORTING NATURE AND ALTHOUGH HE MIGHT MAKE CERTAIN RECOMMENDATIONS CHANGES WOULD BE MADE WITH THE APPROVAL OF THE INDUSTRIAL ENGINEER, HIS SUPERVISOR. HE HAS ACCESS TO FILES RELATING TO THE INDUSTRIAL ENGINEERING FUNCTION BUT THERE IS NO INDICATION THAT HE HAS ANYTHING TO DO WITH MATTERS RELATING TO LABOUR RELATIONS OF A CONFIDENTIAL NATURE. THE BOARD DEALT WITH A SIMILAR CLASSIFICATION IN THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) AND CANADIAN ACME SCREW & GEAR LIMITED CASE O.L.R.B. MONTHLY REPORT, FEBRUARY 1967, P. 872 AND FOUND IN THAT CASE THAT IN ADDITION TO THEIR REPORTING FUNCTIONS THEY EXERCISED INDEPENDENT JUDGMENT AND ACTED ON BEHALF OF MANAGEMENT IN CONFIDENTIAL MATTERS RELATING TO LABOUR RELATIONS AND WERE EXCLUDED FROM THE BARGAINING UNIT. THE BOARD HAS BOTH EXCLUDED AND INCLUDED SUCH A CLASSIFICATION IN THIS TYPE OF BARGAINING UNIT DEPENDING ON THE PARTICULAR FACTS IN EACH CASE. THIS MATTER WAS ALSO DEALT WITH IN THE FERRANTI-PACKARD CASE (SUPRA) AND THE PRINCIPLES WHICH THE BOARD HAS CONSISTENTLY APPLIED IN DEALING WITH SECTION 1(3)(B) OF THE ACT ARE FOUND IN THE FALCONBRIDGE NICKEL MINES LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1966, P. 379. ON THE BASIS OF THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES AND HAVING REGARD TO THE ABOVE

NOTED CASES WE FIND THAT THE TIME STUDY ANALYST IS NOT EMPLOYED IN A CONFIDENTIAL CAPACITY RELATING TO LABOUR RELATIONS NOR DOES HE EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND IS THEREFORE AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

8. THE BOARD FURTHER FINDS THAT ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT OTTER LAKE SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, SECRETARY TO THE PLANT MANAGER, SECRETARY TO THE CONTROLLER, GENERAL ACCOUNTANT, COST AND BUDGET ANALYST, EMPLOYEES OF THE PERSONNEL DEPARTMENT, PLANT ENGINEER, FIRST AID ATTENDANTS CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON FEBRUARY 11, 1969 THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER J.E.C. ROBINSON: MAY 20, 1969.

I CONCUR WITH THE DECISION OF THE BOARD EXCEPT IN SO FAR AS THE DECISION OF THE MAJORITY DEALING WITH MR. K.F. EVANS. ON THE BASIS OF ALL THE EVIDENCE I WOULD HAVE EXCLUDED HIM FROM THE BARGAINING UNIT PURSUANT TO THE PROVISIONS OF SECTION 1(3)(B) OF THE ACT.

DECISION OF BOARD MEMBER P.J. O'KEEFE: MAY 20, 1969.

I CONCUR WITH THE DECISION OF THE BOARD EXCEPT IN SO FAR AS THE DECISION OF THE MAJORITY DEALING WITH MRS. GERALDINE CORMICAN. ON THE BASIS OF HER EVIDENCE I WOULD NOT HAVE FOUND THAT SHE WAS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND WOULD HAVE INCLUDED HER IN THE BARGAINING UNIT.

15636-68-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) v. TRW ELECTRONIC COMPONENTS LIMITED (RESPONDENT). v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS P.J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: L.A. MACLEAN, JOHN F. KANE FOR THE APPLICANT; WARREN WINKLER, KENNETH R. GILLIES, W. HAWLEY FOR THE RESPONDENT; WILLIAM R. MCMURTRY FOR A GROUP OF EMPLOYEES.

DECISION OF H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER
P.J. O'KEEFFE: MAY 7, 1969.

1. AT THE HEARING IN THIS MATTER THE RESPONDENT RAISED BY WAY OF A PRELIMINARY OBJECTION THAT THE APPLICATION WAS UN-TIMELY AND SHOULD BE THEREFORE DISMISSED WITH A BAR OF SIX MONTHS IMPOSED ON THE APPLICANT FROM THE DATE OF THE DISMISSAL IN ITS PRIOR APPLICATION.
2. ON NOVEMBER 8TH 1968 THE APPLICANT FILED AN APPLICATION FOR CERTIFICATION COVERING EMPLOYEES OF THE RESPONDENT IN A LIKE BARGAINING UNIT PROPOSED IN THIS APPLICATION. THE MATTER CAME ON FOR HEARING, AT WHICH TIME WE ARE ADVISED THE PARTIES NOTIFIED THE BOARD (A DIVISION OF WHICH WAS DIFFERENTLY CONSTITUTED THAN THE PRESENT) THAT SUBJECT TO THE BOARD'S CONSENT, THEY HAD AGREED TO WITHDRAW CERTAIN CHARGES AND CHALLENGES AND AGREED TO THE BOARD DIRECTING A REPRESENTATION VOTE. THE BOARD ACCDED TO THE AGREEMENT BUT DECLARED IN ANY EVENT IT WOULD CONTINUE WITH ITS INVESTIGATION INTO CERTAIN NON-PAY ALLEGATIONS. THE APPLICANT BY LETTER OBJECTED TO THIS PROCEDURE AS ITS INITIAL AGREEMENT WAS MADE ON CONDITION THAT ALL CHARGES MADE BY IT AND AGAINST IT WOULD BE DROPPED AND REQUESTED LEAVE TO RE-OPEN THE WHOLE MATTER. BY ITS DECISION DATED NOVEMBER 27TH, 1968 AN EXAMINER WAS APPOINTED AND THE MATTER WAS LISTED FOR CONTINUATION OF HEARING ON FEBRUARY 6TH 1969. AT THE REQUEST OF THE APPLICANT FOR CONSENT TO WITHDRAW THIS APPLICATION, THE BOARD BY ITS DECISION DATED FEBRUARY 3RD 1969 DISMISSED THE APPLICATION. A QUESTION OF IMPOSING A BAR ON THE APPLICANT AT THAT TIME AROSE AND BY ITS DECISION DATED FEBRUARY 13TH 1968 THE BOARD DENIED THE REQUEST WITHOUT PREJUDICE TO RAISING THE MATTER ON A SUBSEQUENT APPLICATION. IT IS WITHIN THE FOREGOING FACTS THAT THE RESPONDENT NOW MAKES ITS SUBMISSION.
3. WHILE A PROPOSITION WAS PUT BEFORE THE BOARD BY THE PARTIES WITH RESPECT TO A REPRESENTATION VOTE IT IS APPARENT THAT THE BOARD WAS PREPARED TO ACCEPT IT SUBJECT TO ITS INVESTIGATION INTO CERTAIN NON-PAY ALLEGATIONS AND IT IS CLEAR THAT THE BOARD DID NOT AT ANY TIME DIRECT THAT A REPRESENTATION VOTE BE TAKEN. ON THE CONTRARY A DECISION WAS MADE TO INQUIRE INTO "ALL THE OUTSTANDING ISSUES." WE DO NOT CONCUR IN THE SUBMISSION OF THE RESPONDENT THAT THIS MATTER FALLS WITHIN THE PRINCIPLE ENUNCIATED IN THE MATHIAS OUELLETTE CASE (1955) CCH CANADIAN LABOUR LAW

REPORTS, TRANSFER BINDER 1955 - 1959 16 ¶16,026 WHICH IS RESTRICTED ON ITS FACTS TO THE SITUATION WHERE THE BOARD HAS DIRECTED A REPRESENTATION VOTE. OBVIOUSLY THE BOARD, BY DECIDING TO PROCEED WITH CERTAIN CHANGES DID NOT ACCEPT THE PARTIES' AGREEMENT AND A VOTE WAS NOT DIRECTED, SO THAT IT CANNOT BE MAINTAINED THAT THE APPLICANT WITHDREW ITS APPLICATION IN THE FACE OF AN EXPECTED DEFEAT RESULTING FROM A VOTE WHICH IS THE SITUATION WHERE THE BOARD USUALLY CONSIDERS IT PROPER TO IMPOSE A BAR UNDER SECTION 77(2)(I) OF THE LABOUR RELATIONS ACT. WE DO NOT FIND THAT THERE ARE SPECIAL CIRCUMSTANCES IN THIS CASE TO PERSUADE US TO DEVIATE FROM THE PRINCIPLE IN THE MATHIAS OUELLETTE CASE [SUPRA].

4. FOR THE FOREGOING REASONS AND HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES THE BOARD FINDS THAT THIS APPLICATION IS TIMELY.

5. THE MATTER IS REFERRED TO THE REGISTRAR TO LIST THE MATTER FOR CONTINUATION OF HEARING WHICH WILL BE HELD AT COLLINGWOOD.

DISSENT OF BOARD MEMBER J.E.C. ROBINSON: MAY 7, 1969.

I CONCUR WITH THE MAJORITY THAT THE FACTS IN THE INSTANT CASE MAY BE DISTINGUISHED FROM THE FACTS IN THE MATHIAS OUELLETTE CASE C.C.H. CANADIAN LABOUR LAW REPORTS, TRANSFER BINDER 1955-1959 16-16,026.

I DO SAY, HOWEVER, THAT THERE IS A CERTAIN ANALOGY TO THE MATHIAS OUELLETTE CASE WHICH WOULD LEAD ME TO MAKE CERTAIN FINDINGS WITH RESPECT TO THE FACTS OF THIS CASE.

IN THE PREVIOUS APPLICATION FOR CERTIFICATION COVERING EMPLOYEES OF THE RESPONDENT IN A LIKE BARGAINING UNIT TO THAT PROPOSED IN THIS APPLICATION, THE TRADE UNION WITHDREW ITS APPLICATION IN THE FACE OF, INTER ALIA, AN INQUIRY BY THE BOARD INTO ALLEGATIONS OF NON PAY CONCERNING THE MEMBERSHIP EVIDENCE SUBMITTED IN THAT CASE.

IN THE MATHIAS OUELLETTE CASE, THE BOARD SAID:-

"IT SEEMS TO US THAT A TRADE UNION SHOULD NOT BE PERMITTED TO ANTICIPATE DEFEAT IN A REPRESENTATION VOTE AND ESCAPE THE CONSEQUENCES OF DEFEAT BY SEEKING TO WITHDRAW ITS APPLICATION AFTER SUCH A VOTE HAS BEEN DIRECTED BY THE BOARD BUT BEFORE THE VOTE HAS BEEN TAKEN. ON THE OTHER HAND, THERE HAVE BEEN A FEW CASES THE

SPECIAL CIRCUMSTANCES OF WHICH HAVE LED THE BOARD TO REFRAIN FROM IMPOSING A BAR UPON AN UNSUCCESSFUL APPLICANT EVEN AFTER A REPRESENTATION VOTE HAS BEEN TAKEN. SIMILAR CIRCUMSTANCES MAY EXIST IN A CASE IN WHICH A UNION SEEKS LEAVE TO WITHDRAW AFTER THE DIRECTION FOR THE VOTE HAS BEEN ISSUED BUT BEFORE IT IS TAKEN, BUT THE EXISTENCE OF THOSE CIRCUMSTANCES MIGHT COME TO LIGHT ONLY IF THE BOARD WERE TO HOLD A HEARING ON THE REQUEST FOR LEAVE TO WITHDRAW AN APPLICATION. IN OUR EXPERIENCE, WE HAVE FOUND THAT A NEW APPLICATION BY A UNION WHICH HAS MADE SUCH A REQUEST IS RARELY FILED WITHIN THE SIX MONTH PERIOD. CONSEQUENTLY, IN ORDER TO AVOID THE NECESSITY OF A FURTHER HEARING IN EACH CASE WHERE THERE MAY BE A REQUEST TO WITHDRAW AT THE STAGE OF THE PROCEEDINGS INDICATED ABOVE, THE BOARD DOES NOT PROPOSE TO IMPOSE AN AUTOMATIC SIX MONTHS' BAR, AS HAS BEEN THE PRACTICE IN CASES WHERE A VOTE HAS BEEN TAKEN, BUT IF THE APPLICANT UNION FILES A NEW APPLICATION AFFECTING THE SAME EMPLOYEES WITHIN SIX MONTHS FROM THE DATE WHEN THE APPLICATION IS DISMISSED, THE ONUS WILL LIE ON THE APPLICANT TO SHOW THAT SPECIAL CIRCUMSTANCES DO EXIST WHICH WOULD WARRANT THE NEW APPLICATION BEING ENTERTAINED AT THAT TIME."

A FORTIORI, IT SEEMS TO ME THAT A TRADE UNION SHOULD NOT BE PERMITTED TO ANTICIPATE AN ADVERSE DECISION ON THE BOARD'S INQUIRY INTO ALLEGATIONS OF NON PAY AND WITHDRAW ITS APPLICATION AFTER SUCH AN INQUIRY HAS BEEN DIRECTED BY THE BOARD.

IT IS TRITE TO SAY THAT THE BOARD MUST BE MOST CIRCUM-SPECT IN QUESTIONS OF ALLEGED FRAUD TO SATISFY ITSELF THAT IT IS COMPLETELY ABSENT FROM ANY ORGANIZATIONAL CAMPAIGN.

IT IS MY OPINION, THEREFORE, THAT IN THE CIRCUMSTANCES OF THIS CASE, THE RESPONDENT SHOULD HAVE THE RIGHT TO SUBMIT EVIDENCE TO THIS BOARD OF ANY ALLEGED FRAUD IN THE ORGANIZATIONAL CAMPAIGN GIVING RISE TO THE PREVIOUS APPLICATION AND RELATE IT TO THE INSTANT APPLICATION.

IN THE ALTERNATIVE, IF SUBSEQUENT EVIDENCE WOULD COME BEFORE THE BOARD IN THE CONTINUATION OF THIS APPLICATION, THAT THE ORGANIZATIONAL CAMPAIGN IN THE PRESENT APPLICATION AND THE ORGANIZATIONAL CAMPAIGN IN THE PREVIOUS APPLICATION ARE ONE AND THE SAME, I AM OF THE OPINION THAT THE BOARD SHOULD CONDUCT ITS OWN INQUIRY TO ASCERTAIN THAT THERE IS A COMPLETE ABSENCE OF FRAUD IN THE ORGANIZATIONAL CAMPAIGN AS A WHOLE.

15656-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V.
DOME MINES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS
P.J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: LORNE INGLE, GARY TONELLI AND
MICHAEL FARRELL FOR THE APPLICANT; R.V. HICKS AND F.H. HUGGINS
FOR THE RESPONDENT; F.R. VON VEH AND PHIL LESSARD FOR THE GROUP
OF EMPLOYEES.

DECISION OF VICE-CHAIRMAN, RORY F. EGAN AND BOARD MEMBER
P.J. O'KEEFFE: MAY 27, 1969.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THERE WAS FILED A STATEMENT OF OBJECTION OR PETITION IN OPPOSITION TO THE APPLICATION. A NUMBER OF EMPLOYEES WHO HAD SIGNED MEMBERSHIP CARDS IN THE UNION ALSO SIGNED THE PETITION SIGNIFYING OPPOSITION TO THE UNION IN SUFFICIENT NUMBERS TO MAKE IT NECESSARY FOR THE BOARD TO INQUIRE INTO THE ORIGINATION AND CIRCULATION OF THE PETITION AND THE MANNER IN WHICH THE SIGNATURES THERETO WERE OBTAINED. THAT IS TO SAY THAT IF THE PETITION IS FOUND TO BE VALID IN ALL RESPECTS, IT WILL CAST DOUBT UPON THE MEMBERSHIP EVIDENCE FILED BY THE UNION SO THAT THERE WOULD NOT REMAIN UNCHALLENGED EVIDENCE OF MEMBERSHIP OF MORE THAN 55% OF THE EMPLOYEES IN THE BARGAINING UNIT. IN SUCH A CASE A VOTE IS GENERALLY ORDERED.

2. EVIDENCE IN SUPPORT OF THE PETITION WAS GIVEN BY EMPLOYEES P. LESSARD, W. MILLER, D. HAYES AND W. UREN. EACH OF THESE WITNESSES PLAYED AN ACTIVE PART IN THE CIRCULATION OF THE PETITION AND IDENTIFIED THE SIGNATURES OF THE EMPLOYEES WHOM THEY HAD HAD SIGN THE DOCUMENT. LESSARD, WHO IS EMPLOYED AS A SHIFT CAGETENDER, TESTIFIED THAT THE IDEA FOR A PETITION WAS HIS OWN AND WAS FORMULATED AFTER HE HAD ATTENDED A UNION ORGANIZATIONAL MEETING ON SATURDAY THE 8TH OF FEBRUARY. HE SAID THAT HE THEN WENT TO SEE A LOCAL SOLICITOR WITH RESPECT TO THE MATTER. THE SOLICITOR PREPARED THE PETITION FORMS FOR LESSARD AND HAD THEM DELIVERED TO HIS HOME.

3. LESSARD TOOK THE PETITION TO THE LOCKER ROOM IN THE MINE DRY ON THURSDAY THE 13TH OF FEBRUARY AND PROCEEDED TO OBTAIN SIGNATURES TO THE PETITION THERE. THE LOCKER ROOM IS USED BY EMPLOYEES FOR STORAGE OF THEIR STREET CLOTHES WHICH THEY REMOVED BEFORE DESCENDING TO ANOTHER LEVEL OF THE DRY TO PUT ON THEIR MINING EQUIPMENT. ON COMPLETION OF THEIR SHIFT, THE EMPLOYEES REMOVE THEIR MINING CLOTHES DOWNSTAIRS AND RETURN TO THE LOCKER ROOM TO DRESS AND PROCEED HOME.

4. THERE IS A SMALL ROOM OR OFFICE PARTITIONED OFF FROM THE LOCKER ROOM WHICH IS USED AS A PAY OFFICE FOR THE NIGHT SHIFT. PART OF THE NORMAL EQUIPMENT OF THIS OFFICE IS A SMALL TABLE, LESSARD STATED THAT HE TOOK THE TABLE OUT OF THE OFFICE FOR USE

WHILE TAKING THE SIGNATURES TO THE PETITION. HIS TESTIMONY WAS THAT HE REMOVED THIS TABLE FROM THE PAY OFFICE WITHOUT PERMISSION OF ANY ONE IN MANAGEMENT. THIS, HE SAID, HE DID ON MONDAY THE 17TH OF FEBRUARY, FOR THE USE OF EMPLOYEES SIGNING THE PETITION. THERE WAS EVIDENCE, HOWEVER, THAT THE TABLE WAS IN USE BY THOSE CIRCULATING THE PETITION IN THE LOCKER ROOM ON THE 13TH, 14TH, 17TH AND 18TH OF FEBRUARY.

5. LESSARD ALSO OBTAINED SIGNATURES OF EMPLOYEES AT THEIR HOMES AND SOME, HE TESTIFIED, AT THE HOSPITAL. HE SAID THAT HE OBTAINED NO SIGNATURES DURING THE EMPLOYEES' WORKING HOURS AND AT NO TIME SOUGHT PERMISSION FROM ANY ONE IN MANAGEMENT TO TAKE TIME OFF OR TO MAKE USE OF THE FACILITIES IN THE LOCKER ROOM. HE STATED THAT HE ARRANGED WITH ANOTHER CAGETENDER, (ALEX ST. JACQUES?), ON MONDAY THE 17TH OF FEBRUARY 1969, TO LOOK AFTER HIS CAGE UNTIL HE RELIEVED HIM. HE WAS TO PAY BACK THIS TIME TO THE OTHER CAGETENDER WHEN THE LATTER REQUIRED IT. LESSARD ALSO STATED THAT HE WAS FREE TO MAKE THIS EXCHANGE WITHOUT CONSULTATION WITH MANAGEMENT AND THAT HE, IN FACT, DID NOT ASK PERMISSION OF ANY ONE TO EXCHANGE TIME WITH THE OTHER CAGETENDER.

6. THERE WAS EVIDENCE FROM UNDERGROUND WORKERS TO THE EFFECT THAT EXCHANGE OF TIME UNDERGROUND COULD ONLY BE ACCOMPLISHED AFTER THE MATTER WAS TAKEN UP WITH THE SHIFT BOSS CONCERNED. ARTHUR BULL, WHOSE TESTIMONY IN OTHER AREAS WILL BE REVIEWED LATER, STATED THAT HE WORKED ON THE SURFACE AND THAT IT WAS HIS UNDERSTANDING THAT THERE WAS AN UNWRITTEN LAW THAT YOU DO NOT SWITCH WITHOUT CONSULTATION WITH THE SHIFT BOSS. MR. ROBERT PATTERSON, A SHIFT BOSS, IN HIS TESTIMONY STATED THAT PERMISSION TO SWITCH MUST BE OBTAINED AND THAT THIS APPLIED THROUGHOUT THE MINE. IT WOULD SEEM THEREFORE, THAT EVEN IF WE ACCEPT LESSARD'S EVIDENCE THAT CAGETENDERS DO NOT NEED TO GET PERMISSION TO CHANGE SHIFT HOURS, THIS WAS NOT THE GENERAL UNDERSTANDING OF THE OTHER WITNESSES. IT WOULD BE NATURAL, THEREFORE, FOR THOSE WHO OBSERVED HIM WORKING ON THE PETITION DURING THE HOURS WHEN HE WOULD NORMALLY BE OPERATING THE CAGE, TO CONCLUDE THAT HE HAD OBTAINED PERMISSION FROM MANAGEMENT TO CHANGE HIS WORK HOURS WHILE AT THE SAME TIME REMAINING ON THE PREMISES.

7. WILLIAM MILLER TESTIFIED THAT HE SAW LESSARD TAKING NAMES FOR THE PETITION AND VOLUNTEERED TO HELP HIM. HIS ASSISTANCE WAS ACCEPTED BY LESSARD AND HE SAT DOWN AT THE TABLE IN THE LOCKER ROOM AND TOOK SIGNATURES AS THE MEN CAME INTO THE ROOM. HE COMMENCED ON THURSDAY, FEBRUARY 13TH. HE ALSO OBTAINED SIGNATURES IN THE LOCKER ROOM ON FRIDAY, FEBRUARY 14TH. HE TESTIFIED THAT HE WAS NOT PART OF MANAGEMENT AND HAD NO DISCUSSION WITH ANY ONE IN MANAGEMENT WITH RESPECT TO THE ORIGINATION OR CIRCULATION OF THE PETITION.

8. FURTHER ASSISTANCE WAS RENDERED LESSARD BY WILLIAM UREN, AN ELECTRICIAN EMPLOYED ON THE MINE. HE SAID HE OBTAINED SOME SIGNATURES AT THE MINE DRY, SOME AT EMPLOYEES' HOMES AND SOME AT THE SKATING RINK. HE ALSO TESTIFIED THAT HE HAD NOT DISCUSSED THE MATTER AT ANY TIME WITH PERSONS IN MANAGEMENT.

9. SIGNATURES TO THE PETITION WERE ALSO TAKEN BY DURLAND HAYES, WHO IS EMPLOYED IN THE PLATE SHOP. HE VOLUNTEERED TO HELP LESSARD WITH THE PETITION. IT IS IN THE EVIDENCE THAT, AMONG OTHERS WHICH HE OBTAINED ON THE PREMISES, HAYES OBTAINED THREE SIGNATURES DURING WORKING HOURS FROM EMPLOYEES WHO WERE AT THEIR WORK STATIONS IN THE MACHINE SHOP. HE STATED THAT HE KNEW THAT THE MACHINE SHOP FOREMAN WAS IN THE SHOP AT THE TIME, BUT STATED THAT HE MADE SURE THE LATTER DID NOT SEE WHAT HE WAS DOING. THE FOREMAN, KRCEL, IN HIS EVIDENCE STATED THAT HE REMEMBERED HAYES WAS IN THE SHOP ON THE THURSDAY. THE FOREMAN WOULD HAVE BEEN SOMEWHERE BETWEEN 20 AND 30 FEET AWAY FROM HAYES AND THE OTHER EMPLOYEES WHEN THEY SIGNED THE PETITION. KRCEL ESTIMATED THAT HAYES WAS IN THE SHOP FOR FROM 15 TO 20 MINUTES. HE SAID, IT DID NOT CONCERN HIM IF SOME ONE CAME IN AND TALKED TO HIS EMPLOYEES FOR MORE THAN HALF AN HOUR, SINCE IT WAS CUSTOMARY TO VISIT ON SURFACE AND SPEAK ABOUT JOBS. WE FIND THIS TO BE A SOMEWHAT EXTRAORDINARY STATEMENT TO COME FROM THE FOREMAN OF HOURLY PAID EMPLOYEES, PARTICULARLY WHEN HE PURPORTED TO BE UNAWARE OF THE REASON FOR HAYES' VISIT TO WHOM HE WAS TALKING.

10. DON GILLIS, AN UNDERGROUND EMPLOYEE WHO WAS CALLED BY THE APPLICANT, STATED THAT HIS SHIFT BOSS, BILL KALKA HAD SAID TO HIM THAT IF THE UNION GOT INTO DOME, THE SAME THING AS HAPPENED AT MCINTYRE AND HOLLINGER WOULD HAPPEN AT DOME - THAT IS THAT THERE WOULD BE A SHUT DOWN OF OPERATIONS. GILLIS SAID HE SAW WM. MILLER AT THE TABLE IN THE LOCKER ROOM ON THE 17TH, WHILE MR. LESSARD WAS, AT THE SAME TIME, AROUND THE LOCKERS SEEKING SIGNATURES. HE SAID THAT A MINE SECURITY GUARD WAS ON DUTY DOWNSTAIRS WHEN HE CAME OFF SHIFT. HE ALSO STATED THAT HE SAW A MAN NAMED HUNTER COMING DOWN FROM THE LOCKERS. HE TESTIFIED THAT HE HAD NEVER SEEN THE TABLE IN THE LOCKER ROOM BEFORE THE TAKING OF THE PETITION AND HAS NOT SEEN IT SINCE. THE SHIFT BOSS, KALKA, WAS NOT CALLED UPON TO GIVE EVIDENCE.

11. ANOTHER UNDERGROUND EMPLOYEE, JOHN PAUL THERIAULT, TESTIFIED THAT ON THURSDAY, FEBRUARY 13TH, HE HAD A CONVERSATION WITH HIS SHIFT BOSS AT ABOUT 8:30. THE SHIFT BOSS, MR. BOB PATTERSON, ACCORDING TO MR. THERIAULT, ASKED HIM IF HE HAD JOINED THE UNION.

THERIAULT SAYS, HE DID NOT ANSWER THE QUESTION. PATTERSON THEN ASKED HIM, HE SAID, WHY HAD SOME MINES CLOSED DOWN - LIKE MCINTYRE. "HE TOLD ME", THERIAULT SWORE, "THAT IT WAS BECAUSE OF THE UNION". PATTERSON ALSO ASKED HIM IF HE WAS GOING TO SIGN THE PETITION. THERIAULT STATED THAT HE TOLD HIM, HE DID NOT KNOW. HE SAW MILLER AT THE TABLE IN THE LOCKER ROOM ON THURSDAY AND FRIDAY. HE SAID, HE HAD NOT SEEN THE TABLE BEFORE OR SINCE THOSE TIMES.

12. THE COMPANY CALLED MR. ROBERT PATTERSON - HE HAS WORKED FOR THE RESPONDENT FOR 21 YEARS AND HAS OCCUPIED THE POSITION OF SHIFT BOSS FOR 4 YEARS. HIS ATTENTION WAS DIRECTED TO THE MONTH OF FEBRUARY 1969 BETWEEN THE DATES OF THE 1ST AND 18TH INCLUSIVE, AND HE WAS ASKED IF HE HAD HAD ANY DISCUSSION WITH MANAGEMENT WITH RESPECT TO UNION DURING THAT PERIOD. HE REPLIED THAT HE HAD NO DISCUSSIONS WITH MANAGEMENT WITH RESPECT TO THE UNION OR WITH RESPECT TO AN EMPLOYEES' PETITION. HE WAS ASKED IF HE HAD HAD ANY CORRESPONDENCE WITH MR. THERIAULT ABOUT THE UNION. HE REPLIED THAT IF HE HAD TALKED TO THEM, IT WAS THEM THAT BROUGHT IT UP. HE SAID THAT HE HAD NEVER APPROACHED THEM ABOUT THE UNION AND THAT HE COULD NOT RECALL ANY CONVERSATION WITH THERIAULT AND DID NOT ASK HIM IF HE WAS GOING TO SIGN THE PETITION. HE THEN WENT ON TO SAY THAT HE HAD TALKED TO THERIAULT WHEN HIS PARTNER FRANK CURELLO WAS PRESENT. HE SAID, HE TOLD HIM WHAT HE THOUGHT OF THE UNION, BUT STATED HE KNEW NOTHING ABOUT THE PETITION UNTIL THEY TOLD HIM OF IT. THERIAULT'S ACCOUNT WAS MORE POSITIVE THAN PATTERSON'S AND WE ACCORDINGLY PREFER HIS VERSION OF THE ABOVE INCIDENTS.

13. MR. GIRARD SIROIS HAS BEEN AN UNDERGROUND WORKER AT DOME SINCE NOVEMBER 1968. HE STATED THAT HE HAD HAD A CONVERSATION WITH ONE ELMER JOHNSON, WHOM HE IDENTIFIED AS A SPARE SHIFT BOSS, CONCERNING THE UNION. HE SAID THAT JOHNSON TOLD HIM THAT THERE WAS NO POINT IN TRYING TO GET THE UNION IN; THAT IT WAS TOO LATE NOW AND THAT THE SAME THING WOULD HAPPEN AS AT HOLLINGER AND IT WOULD CLOSE DOWN. HE STATED THAT JOHNSON TOLD HIM THAT HE HAD WORKED AT HOLLINGER AND THAT HE SAW NO POINT IN IT, I.E. THE UNION. THE COMPANY SUBPOENED MR. JOHNSON. THE EXTENT OF HIS TESTIMONY WAS THAT HE HAD BEEN AN EMPLOYEE OF DOME AS A DRILLER FOR 14 YEARS AND THAT HE ACTS FROM TIME TO TIME AS A SPARE SHIFT BOSS. THERE WAS NO REFERENCE TO THE CONVERSATION RECOUNTED BY SIROIS IN JOHNSON'S EVIDENCE.

14. EVIDENCE WAS GIVEN BY MR. TONELLI, AN UNDERGROUND WORKER, CONCERNING A CONVERSATION WHICH HE HAD WITH MR. W. HOCKING, A SHIFT BOSS, ON FEBRUARY 10TH. HE TESTIFIED THAT HOCKING SAID THAT IF THE UNION CAME IN, DOME WOULD CLOSE IN 5 YEARS AND THAT ANY MAN SUPPORTING THE UNION WAS CUTTING HIS OWN THROAT.

15. W. HOCKING HAS BEEN AN EMPLOYEE OF THE DOME MINES SINCE NOVEMBER 24, 1925. HE HAS BEEN A SHIFT BOSS FOR 6 YEARS. HE RECALLED DISCUSSING THE UNION WITH TONELLI SOMETIME DURING THE MONTH OF FEBRUARY. HE SAID THAT HE ASKED WHY THEY WANTED THE UNION AND TOLD THEM THAT HE COULD SEE NO USE FOR THE UNION BEING THERE. HE TOLD TONELLI THAT THE UNION SHOULD BRING THE RATES IN OTHER PLACES UP TO DOMES'. HE SAID HE HAD NEVER TALKED TO ANYONE IN MANAGEMENT ABOUT THE PETITION. IN CROSS-EXAMINATION, MR. HOCKING STATED THAT HE HAD STRONG OPINIONS AND DIDN'T MIND EXPRESSING THEM. HE STATED THAT ON ANOTHER OCCASION HE SPOKE TO TONELLI, DICK DIONE AND SOME TRACKMEN WITH RESPECT TO THESE VIEWS ABOUT THE UNION. HE SAID HE WAS EXPRESSING HIS OWN VIEWPOINT AND WAS NOT ASKED BY THE COMPANY TO EXPRESS ANY OPINION AS TO THE UNION, TO EMPLOYEES.

16. ARTHUR BULL, IN ADDITION TO THE TESTIMONY PREVIOUSLY MENTIONED, GAVE EVIDENCE WITH RESPECT TO AN INCIDENT WHICH HE SAID OCCURRED AT THE MINE GATE-HOUSE ON FEBRUARY 13TH. HE TESTIFIED THAT ON THAT DATE HE WENT TO THE GATE-HOUSE TO MAKE A TELEPHONE CALL ON THE PUBLIC TELEPHONE AVAILABLE THERE. HE SAID THAT HE BORROWED A DIME FROM THE GATEMAN, WHOM HE IDENTIFIED AS TOM MITCHELL. HE WAS IN ERROR AS TO THE NAME AND LATER CORRECTED IT TO THE PROPER NAME WHICH IS THOMAS NEILL. HE SAID THAT WHEN HE ENTERED THE GATE-HOUSE, HE SAW MR. FRANK NEWMAN, WHO IS AN UNDER-GROUND SUPERVISOR, TALKING TO THE GATEMAN. HE SAID THAT NEWMAN WAS TALKING ABOUT THE UNION AND "THE GUYS WITH THE PETITION", AND THAT HE SAID TO NEILL THAT IN HIS OWN MIND THE COMPANY WAS NOT DOING A GOOD JOB ON THE PETITION "BEING SO OPEN AND ON THE PROPERTY." BULL ALSO STATED THAT NEWMAN SAID HE FIGURED THE PETITION WOULD NOT WORK WITH THE COMPANY BEHIND IT. BULL WAS CROSS-EXAMINED WITH RESPECT TO THIS MATTER AND HIS TESTIMONY REMAINED CONSISTENT WITH THAT GIVEN IN HIS EVIDENCE IN CHIEF. IN HIS CROSS-EXAMINATION, HE SAID THAT NEWMAN FIGURED THE COMPANY WAS BEHIND THE PETITION AND WERE NOT WISE BEING SO OPEN AND "RIGHT ON THE COMPANY PROPERTY", AND HE DID NOT SEE HOW IT COULD STAND UP. BULL SAID THAT NEWMAN DID NOT SAY IN SO MANY WORDS THAT THE COMPANY HAD SPONSORED THE PETITION, BUT THAT HE HAD GIVEN THE GIST OF THE CONVERSATION AS HE RECOLLECTED IT.

17. THOMAS NEILL, WHO HAS BEEN EMPLOYED AT DOME MINES FOR 38 YEARS AND IS THE GATEMAN REFERRED TO ABOVE, WAS CALLED BY THE COMPANY. HE SAID THAT HE KNOWS MR. BULL AND THAT HE DOES NOT RECALL HIM BEING IN THE GATE-HOUSE OFFICE DURING FEBRUARY. HE SAID THAT THERE ARE A GREAT MANY PEOPLE GOING THROUGH THE GATE-HOUSE. HE WAS ALSO UNABLE TO RECALL BULL USING THE TELEPHONE SINCE THE FIRST OF THE YEAR. THAT WAS THE EXTENT OF HIS TESTIMONY.

18. MR. NEWMAN WAS NOT CALLED SO THAT NEILL'S EVIDENCE, WHICH SIMPLY AMOUNTS TO A STATEMENT THAT HE COULD NOT RECALL BULL BEING PRESENT IN THE GATE-HOUSE IN FEBRUARY, IS THE ONLY EVIDENCE ADDUCED BY THE COMPANY BY WAY OF REPLY TO BULL'S ACCOUNT OF THE CONVERSATION HE SAYS HE OVERHEARD BETWEEN NEWMAN AND NEILL. THE RESPONDENT COMPANY ATTACKED BULL'S CREDIBILITY IN ITS ARGUMENT AND ASKED THE BOARD TO DISCREDIT HIS TESTIMONY. THERE IS REALLY NO DIRECT CONFLICT BETWEEN BULL'S TESTIMONY AND NEILL'S AND WE CAN FIND NO REASON OF ANY KIND TO DISBELIEVE BULL IN ANY OF HIS TESTIMONY. WE ACCEPT HIS UNCONTRADICTED EVIDENCE AS TO THE CONVERSATION IN THE GATE-HOUSE. WE WOULD ADD THAT IT WAS ALWAYS WITHIN THE COMPETENCE OF THE RESPONDENT TO CALL MR. NEWMAN TO EITHER CONTRADICT BULL'S EVIDENCE OR OFFER SOME EXPLANATION OF THE STATEMENTS ATTRIBUTED TO HIM BY BULL. INDEED COUNSEL FOR THE COMPANY STATED IN ARGUMENT THAT HE HAD CONSIDERED CALLING MR. NEWMAN, BUT HAD DECIDED AGAINST IT. HE APPARENTLY PREFERRED TO REPLY UPON AN ATTACK UPON BULL'S CREDIBILITY. EVEN IF THIS ATTACK HAD ANY STRENGTH, AND WE HAVE STATED IT DID NOT, IT WOULD STILL BE BLUNTED BY THE FAILURE TO PRODUCE MR. NEWMAN. THIS FAILURE CLEARLY INVITES THE DRAWING OF INFERENCES WITH RESPECT TO THE ORIGINATION AND CIRCULATION OF THE PETITION, QUITE UNFAVOURABLE TO THE CASE FOR THE PETITIONERS, WHO INCIDENTALLY MIGHT ALSO HAVE CALLED NEWMAN.

19. BEFORE GOING FURTHER WITH THE MATTER, IT MIGHT BE AS WELL TO RECORD THAT THE EVIDENCE INDICATES THAT IT IS COMPULSORY FOR THE MINERS COMING ON AND OFF THEIR SHIFTS TO USE THE DRY. IN THE DRY, THE MINERS ARE UNDER THE SURVEILLANCE OF A UNIFORMED SECURITY GUARD WHO, IT WOULD SEEM, IS GENERALLY ON DUTY ON THE LOWER FLOOR, BUT SOMETIMES APPEARS AT THE HEAD OF THE STAIRS LEADING TO THE LOCKERS. IT IS ALSO CLEAR FROM THE EVIDENCE THAT SHIFT BOSSSES, FROM TIME TO TIME, APPEAR IN THE LOCKER ROOM IN SEARCH OF EMPLOYEES WORKING ON THEIR SHIFTS. THERE IS NO EVIDENCE THAT THE SECURITY GUARD OR ANY SHIFT BOSS WAS PRESENT IN THE LOCKER ROOM DURING THE TIME THAT THE SIGNATURES TO THE PETITION WERE BEING OBTAINED. NEVERTHELESS, WE ARE OF THE OPINION THAT THE PRESENCE OF THE SECURITY GUARDS AT ALL TIMES IN THE DRY AND THE LIKELIHOOD OF VISITS OF SHIFT BOSSES TO THE LOCKER ROOM, ARE MATTERS TO BE KEPT IN MIND IN ATTEMPTING TO ARRIVE AT A CONCLUSION WITH RESPECT TO THE VOLUNTARY NATURE OF THE PETITION. THERE APPEARED TO BE AN ATTEMPT ON THE PART OF THE PETITIONERS AND THE RESPONDENT TO INVITE AN INFERENCE THAT THE LOCKER ROOM IN PARTICULAR WAS A PRIVATE AREA FOR THE USE OF THE EMPLOYEES OUTSIDE OF WORKING HOURS AND BEYOND THE SUPERVISION OF THE COMPANY.

20. AS HAS BEEN SAID IN OTHER CASES DEALING WITH THE STATEMENTS OF OBJECTIONS AND PETITIONS, THE MATTER DOES NOT TURN PRIMARILY UPON THE QUESTION AS TO WHETHER OR NOT MANAGEMENT ENGAGED IN ANY UNFAIR LABOUR PRACTICE; THE QUESTION IS, WHETHER BASED UPON ALL OF THE EVIDENCE VIEWED OBJECTIVELY, THE PETITION CONSTITUTES AN EXPRESSION OF THE VOLUNTARY WISHES OF THE EMPLOYEES CONCERNED IN ALL THE CIRCUMSTANCES.

21. IF SOME OF THE FOREGOING INCIDENTS WERE TO BE TAKEN INDIVIDUALLY, IT MIGHT BE SAID THAT NO ONE OF THEM WOULD BE SUFFICIENT TO INFLUENCE THE EMPLOYEES ONE WAY OR THE OTHER IN THE EXPRESSION OF THEIR VIEWS WITH RESPECT TO THE UNION. HOWEVER, IT APPEARS TO US THAT WHEN THEY ARE VIEWED COLLECTIVELY IN CONJUNCTION WITH THE STATEMENTS MADE BY NEWMAN, THEY TEND NOT ONLY TO LEND CREDENCE TO THE OPINIONS INHERENT IN THE STATEMENTS, BUT ARE THEMSELVES RENDERED MORE SIGNIFICANT IN THE LIGHT OF THOSE STATEMENTS. THE COMBINATION CLEARLY REVEALS THE PRESENCE OF THE HAND AND MIND OF MANAGEMENT IN THE MATTER OF THE PETITION. THE BOARD HAS ALWAYS DEEMED SUCH PRESENCE TO BE FATAL IN PETITION CASES.

22. THEREFORE, HAVING IN MIND ALL OF THE FOREGOING, TOGETHER WITH THE SUBMISSIONS OF COUNSEL FOR ALL PARTIES, WE FIND ON ALL THE EVIDENCE THAT THE PETITION DOES NOT WEAKEN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO REQUIRE THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

23. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

24. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS MINE, MILL AND PLANT IN THE TOWNSHIPS OF TISDALE, WHITNEY AND SHAW IN THE DISTRICT OF COCHRANE, SAVE AND EXCEPT SHIFT BOSSSES, FOREMEN (INCLUDING ASSISTANT FOREMEN) AND TRAINING SUPERVISORS, PERSONS ABOVE THE RANK OF SHIFT BOSS, FOREMAN (INCLUDING ASSISTANT FOREMAN) OR TRAINING SUPERVISOR, OFFICE AND CLERICAL STAFF (INCLUDING THOSE IN THE MINE, MILL, WAREHOUSE AND YARD OFFICER), ENGINEERING DEPARTMENT GEOLOGICAL DEPARTMENT (OTHER THAN SAMPLERS), REFINER, ASSISTANT REFINER, CHIEF ASSAYER, ASSISTANT ASSAYER, SECURITY GUARDS, HEAD GATEMAN, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

25. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON FEBRUARY 19, 1969, THE

TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

26. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DISSENT OF BOARD MEMBER J.E.C. ROBINSON: MAY 27, 1969.

I DISSENT FROM THE DECISION OF THE MAJORITY WHEREIN THEY FIND THAT THE PETITION DOES NOT WEAKEN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO REQUIRE THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

I HAVE NO HESITATION IN FINDING THAT, BASED ON THE EVIDENCE PRESENTED, THE PETITION IS A VOLUNTARY EXPRESSION OF THE EMPLOYEES WHICH SO CASTS DOUBT UPON THE MEMBERSHIP EVIDENCE FILED BY THE UNION THAT THE WISHES OF THE EMPLOYEES MAY ONLY BE RESOLVED BY MEANS OF A REPRESENTATION VOTE, AND I WOULD HAVE ORDERED SUCH VOTE.

IN DEALING WITH PETITIONS FILED IN OPPOSITION TO AN APPLICATION FOR CERTIFICATION, WHAT THE BOARD IS SEEKING AMONG OTHER THINGS, IS REASONABLE ASSURANCE FROM PERSONS WITH FIRST HAND KNOWLEDGE THAT THE PETITION HAS NOT BEEN SPONSORED OR INITIATED BY MANAGEMENT, THAT IT REFLECTS THE VOLUNTARY DESIRES OF THE EMPLOYEES, AND THAT MANAGEMENT HAS NOT IMPROPERLY INFLUENCED THEM IN ANY WAY.

THE BOARD, IN ITS INQUIRY INTO THE ORIGINATION, PREPARATION, AND CIRCULATION OF THE PETITION, HEARD TESTIMONY FROM FOUR EMPLOYEES OF THE RESPONDENT. P. LESSARD, A SHIFT CAGETENDER, GAVE EVIDENCE THAT THE IDEA FOR A PETITION ORIGINATED WITH HIM, AND THAT HE ATTENDED AT THE OFFICES OF A LOCAL SOLICITOR WHO PREPARED THE FORMS ON HIS BEHALF AND RETURNED THEM TO HIM. HIS TESTIMONY WAS THAT HE OBTAINED A NUMBER OF SIGNATURES OF EMPLOYEES OF THE PETITION BETWEEN THE 13TH OF FEBRUARY AND THE 18TH OF FEBRUARY, IN THE EMPLOYEES' LOCKER ROOM, AT EMPLOYEES' HOMES AND AT THE HOSPITAL. WHILE TAKING SIGNATURES IN THE EMPLOYEES' LOCKER ROOM, A TABLE WAS REMOVED FROM A SMALL ROOM PARTITIONED OFF IN THE LOCKER ROOM, WHICH WAS USED AS A PAY OFFICE FOR THE NIGHT SHIFT. HIS EVIDENCE WAS THAT HE HAD NO DISCUSSIONS WITH MANAGEMENT CONCERNING THE PETITION, THAT MANAGEMENT WAS NOT PRESENT WHEN HE OBTAINED SIGNATURES, AND THAT NO SIGNATURES WERE OBTAINED DURING THE EMPLOYEES' WORKING HOURS.

WILLIAM MILLER GAVE EVIDENCE THAT HE ASSISTED LESSARD VOLUNTARILY IN OBTAINING SIGNATURES ON THE PETITION IN THE EMPLOYEES' LOCKER ROOM. MILLER IS NOT A MEMBER OF MANAGEMENT NOR DID HE DISCUSS THE PETITION WITH MANAGEMENT.

ADDITIONAL ASSISTANCE WAS GIVEN BY WILLIAM UREN, AN ELECTRICIAN, WHO OBTAINED SIGNATURES AT THE SURFACE MINE DRY, AT EMPLOYEES' HOMES AND AT A SKATING RINK.

THE LAST WITNESS CALLED TO IDENTIFY SIGNATURES WHICH HE PROCURED ON THE PETITION, WAS D. HAYES, WHO TESTIFIED THAT HE OBTAINED SIGNATURES AROUND THE PREMISES INCLUDING THE PLATE SHOP AND THE MACHINE SHOP. HIS EVIDENCE WAS THAT WHILE SOME SIGNATURES WERE OBTAINED DURING WORKING HOURS, HE DID NOT HAVE PERMISSION OF MANAGEMENT TO OBTAIN SUCH SIGNATURES, HAD NO DISCUSSION WITH MANAGEMENT IN THIS REGARD, NOR COULD THEY BE AWARE OF WHAT HE WAS DOING. WHILE HIS EVIDENCE WAS THAT TWO OR THREE SIGNATURES WERE OBTAINED IN THE MACHINE SHOP WHERE THE FOREMAN WAS WORKING, HE MADE SURE THAT THE FOREMAN DID NOT SEE HIM. HIS LATTER STATEMENT WAS CORROBORATED BY THE FOREMAN, WHO TESTIFIED UNDER OATH THAT HE WAS NOT EVEN AWARE OF A PETITION UNTIL SOME TIME LATER.

I FIND EACH OF THE WITNESSES CALLED IN SUPPORT OF THE PETITION TO BE COMPLETELY CREDIBLE AND I HAVE NO HESITATION IN BELIEVING THEIR TESTIMONY. NOT ONLY DID I FIND THEIR EVIDENCE COMPLETELY HONEST, BUT I WAS IMPRESSED FROM THEIR DEMEANOUR IN THE WITNESS BOX WITH THEIR INTEGRITY AND INDEPENDENCE.

NEITHER DO I FIND ANY OTHER EVIDENCE WHICH WOULD IMPUGN THEIR TESTIMONY TO THE EXTENT THAT THE BOARD SHOULD CONCLUDE THAT MANAGEMENT HAD ANYTHING WHATSOEVER TO DO WITH THE ORIGINATION, PREPARATION OR CIRCULATION OF THIS PETITION.

INDEED, I COULD ONLY CONCLUDE THAT MANAGEMENT PARTICIPATED IN THE PETITION IF I DISREGARDED THE EVIDENCE AND INSTEAD BASED MY DECISION ON CONJECTURE AND SUSPICION. I AM NOT PREPARED TO DO SO.

NEITHER AM I PREPARED TO DAMN THE EMPLOYEES WHO SIGNED THE PETITION, AS THE APPLICANT DID, AND SAY THAT THIS DOCUMENT DID NOT INDICATE A VOLUNTARY EXPRESSION OF THEIR DESIRES. I FOUND THEM TO BE INDEPENDENT INDIVIDUALS, UNLIKELY TO BE SWAYED AND INFLUENCED BY OTHER THAN THEIR OWN INDIVIDUAL DESIRES.

THE UNION ATTACKED THE PETITION, BY WAY OF CERTAIN CHARGES, ON VARIOUS GROUNDS. IT SUGGESTED THAT SOME SINISTER CONNOTATION SHOULD BE DRAWN FROM THE FACT THAT CERTAIN OF THE PETITIONERS REMOVED AND USED A TABLE FROM THE NIGHT SHIFT PAY ROOM

WHEN OBTAINING SIGNATURES ON THE PETITION. WITNESSES TESTIFIED THAT THE SECURITY GUARD WAS AT THE BOTTOM OF THE STAIRS LEADING FROM THE EMPLOYEES' LOCKER ROOM AND THAT THIS SUGGESTED ACQUIESCE BY THE EMPLOYER IN THE CIRCULATING OF THE PETITION. MY COLLEAGUES APPARENTLY AGREE WITH THIS SUBMISSION. WITH THE GREATEST OF RESPECT TO THEM, I CAN SEE NO SIGNIFICANCE IN THIS WHATSOEVER. THERE IS NOT ONE IOTA OF EVIDENCE THAT THE SECURITY GUARD WAS PRESENT WHEN THE PETITION WAS BEING CIRCULATED AND EVEN IF HE HAD BEEN PRESENT, THERE IS NO SUGGESTION THAT THIS SECURITY GUARD WAS A MEMBER OF MANAGEMENT. THE BOARD IS ALREADY ON RECORD IN ACCEPTING A PETITION WHICH WAS ACTIVELY PARTICIPATED IN BY EMPLOYEES OUTSIDE OF THE BARGAINING UNIT, PROVIDED SUCH PERSONS DO NOT FALL WITHIN A MANAGERIAL CATEGORY. AMERICAN OPTICAL COMPANY CANADA LIMITED CASE, SEPTEMBER 1968 MONTHLY REPORTS, PAGE 602. THAT BEING SO, I CANNOT FIND ANYTHING SIGNIFICANT IN THE FACT THAT A SECURITY GUARD WHO IS NOT A MEMBER OF THE BARGAINING UNIT, MAY HAVE BEEN PRESENT AT THE BOTTOM OF THE STAIRS LEADING FROM THE EMPLOYEES' LOCKER ROOM WHEN THE PETITION WAS BEING CIRCULATED.

THE UNION ALSO SUGGESTED THAT ALTHOUGH SIGNATURES WERE OBTAINED IN THE EMPLOYEES' LOCKER ROOM, THAT IT WAS POSSIBLE THAT A MEMBER OF MANAGEMENT COULD HAVE ATTENDED SUCH ROOM WHILE THE PETITION WAS BEING CIRCULATED. IT SHOULD BE NOTED HOWEVER, THAT DESPITE THIS ALLEGATION, AND DESPITE THE FACT THAT THE UNION SUPPORTERS WOULD BE ALERTED TO LOOK FOR SUCH A HAPPENING, NOT ONE WITNESS CAME FORWARD TO GIVE EVIDENCE THAT A MEMBER OF MANAGEMENT WAS IN FACT IN THE LOCKER ROOM WHEN SUCH SIGNATURES WERE BEING TAKEN. INDEED THE BOARD HAS NOT FOUND THIS TO BE FATAL IN PREVIOUS CASES. SEE CURVPLY WOOD PRODUCTS CASE, MAY 1968 MONTHLY REPORTS, PAGE 192.

THE UNION FURTHER ALLEGES THAT THE COMPANY MUST HAVE ASSISTED WITH THE PETITION BECAUSE P. LESSARD, A CAGETENDER, DID NOT TAKE HIS INITIAL CAGE DOWN INTO THE MINE, BUT INSTEAD IT WAS TAKEN BY ANOTHER CAGETENDER, ST. JACQUES. THE EVIDENCE OF LESSARD, HOWEVER, IS THAT HE ARRANGED WITH ST. JACQUES TO TAKE HIS CAGE INTO THE MINE AND UNDERTOOK TO RETURN THE FAVOUR TO ST. JACQUES AT A LATER TIME. HE SAID THAT THIS WAS A RIGHT GIVEN TO CAGETENDERS AND HIS EVIDENCE IN THIS REGARD WAS UNCONTRADICTED BY ANY WITNESS WHO WAS FAMILIAR WITH THE RIGHTS AND DUTIES OF THE CAGETENDERS.

THE APPLICANT ADDUCED EVIDENCE FROM SEVERAL EMPLOYEES AS TO THEIR DISCUSSIONS WITH SEVERAL SHIFT BOSSSES. EACH SAID THAT THEY WERE NOT INFLUENCED BY WHAT THE SHIFT BOSSSES HAD SAID. INDEED, IT IS CLEAR FROM THEIR EVIDENCE, AND FROM THE EVIDENCE OF THE SHIFT BOSSSES CALLED IN REBUTTAL, THAT THESE MEN WERE MERELY EXPRESSING THEIR PERSONAL OPINIONS AND THAT THEIR DISCUSSIONS WERE IN SOME INSTANCES INITIATED BY THE EMPLOYEES. THESE SHIFT BOSSSES WERE NOT THE

NORMAL TYPE OF MANAGEMENT ENCOUNTERED BY THE BOARD IN ITS INDUSTRIAL CASES, BUT RATHER LONG TIME MINERS WHO WORKED WITH THE MEN IN THE MINE. IT WAS CLEAR TO ME, AND THEY SO TESTIFIED UNDER OATH, THAT THEIR DISCUSSIONS WERE THEIR PERSONAL OPINIONS AND WERE NOT A REFLECTION OF ANY INSTRUCTIONS FROM MANAGEMENT WHICH SHOULD DEPRIVE THE SIGNATORIES TO THE PETITION OF THE RIGHT TO EXPRESS THEIR DESIRES.

THE PRIME WITNESS CALLED BY THE UNION WAS ONE, ARTHUR BULL. THERE CAN BE LITTLE DOUBT FROM HIS TESTIMONY THAT HE WAS A VOCIFEROUS, ENTHUSIASTIC, AND EMOTIONAL SUPPORTER OF THE UNION. INDEED, HIS PARTISANSHIP WAS SHOWN WHEN HE ADMITTED THAT HE REMOVED A PORTION OF THE PETITION FROM THOSE CIRCULATING IT AND REFUSED TO RETURN IT. IT IS IN THIS CONTEXT, THEREFORE, THAT I MUST REGARD HIS EVIDENCE, FOR THERE IS NO DOUBT AS TO HIS PARTIALITY.

BULL TESTIFIED THAT ON FEBRUARY 13TH, HE VISITED THE GATE-HOUSE TO MAKE A PERSONAL TELEPHONE CALL. HE SAID THAT WHEN HE ARRIVED AT THE GATE-HOUSE, THE GATEMAN, "TOM MITCHELL" AND FRANK NEWMAN, THE UNDERGROUND SUPERVISOR WERE PRESENT. ALTHOUGH HE SUGGESTED THAT HE WAS WELL ACQUAINTED WITH THE GATEMAN, (AT LEAST SUFFICIENTLY SO TO BORROW MONEY FROM HIM), IT WAS NOT UNTIL COUNSEL FOR THE RESPONDENT SUGGESTED THAT THE NAME OF THE GATEMAN WAS TOM NEILL THAT HE AGREED THAT THIS WAS THE NAME OF THE GENTLEMAN WITH NEWMAN. HE TESTIFIED THAT IN HIS PRESENCE, NEWMAN STATED TO NEILL THAT HE (NEWMAN) FIGURED THE COMPANY WAS BEHIND THE PETITION AND WERE NOT WISE BEING SO OPEN AND ON COMPANY PROPERTY. BULL ADMITTED, HOWEVER, THAT NEWMAN DID NOT SAY THAT THE COMPANY HAD SPONSORED THE PETITION. BULL THEN SAID THAT HE BORROWED A "DIME" FROM NEILL AND MADE HIS PHONE CALL.

I WOULD FIND THAT IF BULL WAS PRESENT AT THE GATE-HOUSE, THAT HIS RECOLLECTION OF THE CONVERSATION WAS A SUBJECTIVE RECOLLECTION BASED UPON HIS EXTREME PARTISANSHIP. IN ANY EVENT, HOWEVER, IT IS MY OPINION THAT IF NEWMAN DID MAKE THE STATEMENT ATTRIBUTED TO HIM, IT IS COMPLETELY EXONERATORY IN THAT HERE IS A SENIOR MEMBER OF MANAGEMENT ACKNOWLEDGING FROM HIS STATEMENT THAT HE DID NOT KNOW IF THE PETITION WAS SPONSORED BY MANAGEMENT.

I PREFER, HOWEVER, TO DISBELIEVE THE EVIDENCE OF BULL THAT HE WAS EVEN PRESENT AT SUCH A DISCUSSION.

THE RESPONDENT CALLED THE GATEMAN, THOMAS NEILL, IN ANSWER TO THE TESTIMONY OF BULL. MY COLLEAGUES FIND THAT THE TESTIMONY OF NEILL IS NOT IN CONFLICT WITH THAT OF BULL. I CANNOT AGREE.

NEILL STATED UNDER OATH THAT HE KNOWS ARTHUR BULL, BUT THAT HE HAD NOT BEEN IN HIS OFFICE AT ANY TIME DURING FEBRUARY. HE SAID THAT WHILE A GREAT MANY PEOPLE CAME THROUGH THE GATES, HE NEVER

RECALLS BULL USING THE TELEPHONE IN THE GATE-HOUSE SINCE THE BEGINNING OF THE YEAR AND THAT BULL NEVER ASKED HIM FOR CHANGE TO MAKE A PHONE CALL.

IN MY OPINION, THIS TESTIMONY IS IN DIRECT CONFLICT WITH THAT OF BULL. FROM THEIR RESPONSIVENESS AND DEMEANOUR IN THE WITNESS BOX, I PREFER TO BELIEVE THE EVIDENCE OF NEILL. THAT BEING SO, I WOULD FIND THAT BULL WAS NOT A CREDIBLE WITNESS.

I MAY SAY ALSO THAT THE FACT THAT MANAGEMENT IS AWARE THAT A PETITION AGAINST THE UNION WAS BEING CIRCULATED BY EMPLOYEES, HAS BEEN HELD NOT TO BE FATAL TO THE PETITION.

SEE COOPER WEEKS LIMITED CASE, NOVEMBER 1967
MONTHLY REPORTS, PAGE 767;
AMERICAN OPTICAL COMPANY CANADA LIMITED CASE (SUPRA);
CURVPLY WOOD PRODUCTS CASE (SUPRA).

HAVING FOUND THAT BULL WAS NOT A CREDIBLE WITNESS, I HAVE NO DIFFICULTY IN DISBELIEVING HIS ACCOUNT OF THE TAKING OF SIGNATURES BY D. HAYES IN THE MACHINE SHOP. AGAIN, I PREFER THE EVIDENCE OF HAYES THAT THE FOREMAN COULD NOT SEE WHAT HE WAS DOING, AND OF THE SWORN TESTIMONY OF THE FOREMAN KRCEL THAT HE DID NOT SEE HAYES TAKING SIGNATURES ON THE PETITION AND THAT HE DID NOT EVEN KNOW OF THE PETITION UNTIL SOME TIME LATER. NEITHER DO I FIND ANYTHING EXTRAORDINARY IN HIS STATEMENT THAT EMPLOYEES FROM DIFFERENT DEPARTMENTS OCCASIONALLY DISCUSS THEIR WORK IN HIS DEPARTMENT. I INFER FROM THIS THAT THESE DISCUSSIONS TAKE PLACE PREPARATORY TO CERTAIN DUTIES BEING PERFORMED.

IN CONCLUSION, MAY I SAY THAT ON THE EVIDENCE HEARD, I AM ABLE TO FIND ONLY THAT THE PETITION REFLECTS A VOLUNTARY DESIRE ON THE PART OF THE EMPLOYEES WHO WERE SIGNATORIES TO IT. I AM NOT PREPARED TO MAKE A FINDING ON ANYTHING BUT THAT EVIDENCE.

THAT BEING SO, I WOULD HAVE DIRECTED A VOTE AMONG THE EMPLOYEES IN THE BARGAINING UNIT.

15709-68-R: LOCAL UNION 773 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) v. ESSEX PUBLIC UTILITIES COMMISSION (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
P.J. O'KEEFE AND J.E.C. ROBINSON.

DECISION OF O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBER
P.J. O'KEEFE: MAY 27, 1969.

1. THIS IS AN APPLICATION FOR CERTIFICATION.
2. NO STATEMENT OF OBJECTIONS OR DESIRE TO MAKE REPRESENTATIONS HAS BEEN FILED WITH THE BOARD WITHIN THE TIME FIXED UNDER SUBSECTION 3 OF SECTION 42 OF THE BOARD'S RULES OF PROCEDURE FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED APRIL 14, 1969.
3. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.
4. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ESSEX SAVE AND EXCEPT MANAGER AND THOSE ABOVE THE RANK OF MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS ASSOCIATED ON A COOPERATIVE TRAINING BASIS WITH THE ESSEX DISTRICT HIGH SCHOOL, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
5. WE FIND THAT MR. WELDON WHO WAS THE SUPERVISOR OF THE HYDRO DIVISION, ASSIGNS WORK, PURCHASES EQUIPMENT, RECOMMENDS HIRING, ASSESSES THE PERFORMANCE OF PERSONNEL, GRANTS TIME OFF, MAKES RECOMMENDATIONS WHICH AFFECT THE WAGES OF THE EMPLOYEES AND THEIR EMPLOYMENT STATUS, ATTENDS REGULAR MANAGEMENT MEETINGS SOME OF WHICH ARE TO DISCUSS WAGES AND WORKING CONDITIONS, AND ASSISTS IN THE PREPARATION OF THE RESPONDENT'S BUDGET WHICH INVOLVES A REVIEW OF THE RESPONDENT'S FINANCIAL POSITION. HE SPENDS A LIMITED AMOUNT OF TIME WORKING WITH OTHER EMPLOYEES. HAVING REGARD TO THE DUTIES AND RESPONSIBILITIES OF MR. WELDON WE FIND THAT HE EXERCISES MANAGERIAL FUNCTIONS AND IS NOT INCLUDED IN THE BARGAINING UNIT.
6. WE FURTHER FIND THAT MRS. RUTH MACPHERSON IS A GENERAL OFFICE EMPLOYEE CONCERNED WITH GENERAL OFFICE WORK AND EVEN THOUGH SHE HAS ACCESS TO CERTAIN BOOKKEEPING INFORMATION WE FIND THAT HAVING REGARD TO ALL OF HER DUTIES SHE IS NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND IS THEREFORE INCLUDED IN THE BARGAINING UNIT. SEE UNITED STEELWORKERS OF AMERICA V. FALCONBRIDGE NICKEL MINES LIMITED 1966 SEPT. OLRB MTHLY. REP. 379 AT 388.
7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 3, 1969 THE TERMINAL DATE FIXED

FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER J.E.C. ROBINSON: MAY 27, 1969.

ON THE BASIS OF THE REPRESENTATIONS OF THE PARTIES, THE CONTENTS OF THE EXAMINER'S REPORT, AND IN PARTICULAR TO LIST OF DUTIES APPENDED TO THE EXAMINER'S REPORT, I WOULD HAVE FOUND THAT SOME OF THE DUTIES PERFORMED BY MRS. RUTH MACPHERSON WERE CONFIDENTIAL IN MATTERS RELATING TO LABOUR RELATIONS AND, ACCORDINGLY, I WOULD HAVE EXCLUDED HER FROM THE BARGAINING UNIT.

15719-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) v. PARAGON TOOLS COMPANY, LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
R.W. TEAGLE AND E. BOYER.

DECISION OF THE BOARD: MAY 20, 1969.

1. NO STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS HAS BEEN FILED WITH THE BOARD WITHIN THE TIME FIXED UNDER SUBSECTION 3 OF SECTION 42 OF THE BOARD'S RULES OF PROCEDURE FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED APRIL 21, 1969 IN THIS MATTER.

2. THE EXAMINER WAS AUTHORIZED BY THE BOARD TO INQUIRE INTO THE LIST OF EMPLOYEES FILED BY THE RESPONDENT AND ON THE DUTIES AND RESPONSIBILITIES OF DRAFTSMEN AND R. RUTTE AND R. MASSE. THE PARTIES AGREED THAT THE FOLLOWING WERE EMPLOYEES OF THE RESPONDENT ON THE DATE OF THE APPLICATION AND PROPERLY INCLUDED ON THE RESPONDENT'S LISTS: R. HONG, A. MAGNANTE AND J. FLIS. THE PARTIES FURTHER AGREED THAT A. KISS WAS NOT AN EMPLOYEE OF THE RESPONDENT AT WORK ON THE DATE OF THE APPLICATION.

3. R. RUTTE WAS EXAMINED AND HAVING REGARD TO HIS TESTIMONY THAT HE IS A "CHECKER" WHEREBY HE DOES DRAFTING AND DESIGNING AND IS LOCATED IN THE DESIGN OFFICE, IS PAID BY SALARY, DOES NOT PUNCH A TIME CLOCK NOR PERFORMS ANY PRODUCTION WORK, WE FIND THAT HIS COMMUNITY OF INTEREST LIES MORE WITH THE OFFICE GROUP THAN THE PRODUCTION UNIT AND IS NOT AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT DESCRIBED HEREIN.

4. R. MASSE, MACHINE OR TOOL CO-ORDINATOR, STATED THAT HE SCHEDULES TOOLS AS THEY COME IN AND KEEPS TRACK OF THEIR PROGRESS. HE HAS AN OFFICE IN THE PLANT AND REPORTS TO THE PLANT SUPERINTENDENT. HE WORKS IN THE PLANT BUT DOES NOT OPERATE ANY OF THE MACHINES BUT ESTIMATES HE WORKS ABOUT THREE QUARTERS OF HIS TIME IN THE PLANT AND THE BALANCE IN HIS OFFICE. HE DOES NOT PUNCH A TIME CLOCK, IS PAID BY SALARY AND DRESSES IN BUSINESS CLOTHES. WHILE HE HAS SOME OF THE FUNCTIONS RELATING TO OFFICE WORK WE ARE OF THE OPINION HIS POSITION IS MORE A akin TO A PLANT CLERICAL TYPE OF JOB AND IT IS APPARENT THAT AS HE IS DIRECTLY INVOLVED IN THE PRODUCTION PROCESS THAT HIS COMMUNITY OF INTEREST IS MORE CLOSELY ALLIED TO THE PRODUCTION UNIT THAN THE OFFICE. WE FIND THAT R. MASSE IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT DESCRIBED HEREIN.

5. THE APPLICANT OBJECTED TO THE INCLUSION IN THE BARGAINING UNIT OF THOSE PERSONS CLASSIFIED AS DRAFTSMEN. THERE WERE SIX SUCH PERSONS APPEARING ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT AND THE PARTIES AGREED THAT THE EVIDENCE OF J. STEEVENSZ WOULD APPLY FOR ALL OF THEM. HE SAID HE IS EMPLOYED AS A TOOL DESIGNER AND WORKS IN THE DESIGN OFFICE BUT DOES WHEN OCCASION DEMANDS IT WORK IN THE SHOP IF THEY ARE SLACK IN THE TOOL DESIGNING AREA. WHILE IN THE DESIGN OFFICE HE REPORTS TO THE CHIEF ENGINEER, WHO IS HIS BOSS BUT WHEN HE WORKS IN THE PLANT HE REPORTS TO THE PLANT SUPERINTENDENT. ON THE DATE OF THE APPLICATION HE WAS WORKING IN THE DESIGN OFFICE WHERE HE HAD WORKED SINCE JULY. HIS RATE OF PAY IS THE SAME WHEREVER HE WORKS. THE TOOL DESIGN OFFICE IS SEPARATED FROM THE PLANT. HE HAS HAD SPECIAL TRAINING AND IS A GRADUATE OF A TECHNICAL SCHOOL. IT IS CLEAR THAT WHILE THE DRAFTSMEN MAY DO OTHER WORK THAN DESIGNING TOOLS, SUCH WORK IS MERELY AN INCIDENTAL FUNCTION TO THEIR NORMAL DUTIES. HAVING REGARD TO THEIR SPECIAL SKILLS, THE NATURE AND PLACE OF THEIR WORK AND CONDITIONS OF EMPLOYMENT WE FIND THAT THEY HAVE LITTLE COMMUNITY OF INTEREST WITH PLANT EMPLOYEES AND FALL WITHIN A TECHNICAL GROUP AND ARE NOT THEREFORE INCLUDED IN THE BARGAINING UNIT DESCRIBED HEREIN.

6. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

7. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

8. HAVING REGARD TO THE LIST OF EMPLOYEES FILED BY THE RESPONDENT IN THIS MATTER, THE REPORT OF THE EXAMINER, AND TAKING INTO ACCOUNT OUR FINDINGS ON THE REPORT SET OUT ABOVE, WE FIND THAT AS OF THE DATE OF THE APPLICATION THERE WERE 105 EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 7. OF THESE EMPLOYEES, THE APPLICANT CLAIMED 57 AS MEMBERS. THERE WAS ALSO FILED WITH THE BOARD A STATEMENT OF DESIRE INDICATING OPPOSITION TO THIS APPLICATION SIGNED BY 65 EMPLOYEES OF THE RESPONDENT, 19 OF WHOM WERE ALSO CLAIMED BY THE RESPONDENT AS MEMBERS. HAVING REGARD TO THE APPLICANT'S MEMBERSHIP POSITION STATED ABOVE IN RELATIONSHIP TO THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT THE BOARD WOULD NORMALLY DIRECT THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES IN THE BARGAINING UNIT. ACCORDINGLY, ON THAT BASIS, THE BOARD WILL NOT INQUIRE INTO THE CIRCUMSTANCES SURROUNDING THE PETITION FILED IN THIS APPLICATION. THE APPLICANT, HOWEVER, HAS SUBMITTED AMONGST ITS CHARGES RELATING TO THE PETITION THAT THE BOARD SHOULD EXERCISE ITS DISCRETION UNDER SECTION 7(5) OF THE LABOUR RELATIONS ACT. THE APPLICANT HAS DEMONSTRATED THAT MORE THAN 50 PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ARE MEMBERS OF THE APPLICANT AND HAS THEREFORE MET THE CONDITION PRECEDENT FOR CONSIDERATION BY THE BOARD UNDER THIS SECTION.

9. THE BOARD THEREFORE DIRECTS THE REGISTRAR TO LIST THIS MATTER FOR CONTINUATION OF HEARING FOR THE PURPOSE OF CONSIDERING THE APPLICANT'S REPRESENTATIONS WITH RESPECT TO THE EXERCISE OF THE BOARD'S DISCRETION PURSUANT TO THE PROVISIONS OF SECTION 7(5) OF THE ACT.

10. THE HEARING WILL BE HELD AT WINDSOR.

15812-68-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION 141 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. MATTHEWS GROUP LIMITED (RESPONDENT).

BEFORE: G.W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: B. CHERCOVER AND E. H. WINEGARDEN FOR THE APPLICANT AND MITCHES AND K. HACKETT FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 8, 1969.

1. IN ITS DECISION DATED MARCH 27, 1969 THE BOARD DIRECTED A REPRESENTATION VOTE TO BE TAKEN IN THIS MATTER AFTER MAKING CERTAIN FINDINGS WITH RESPECT TO THE COMPOSITION OF THE BARGAINING UNIT. SUBSEQUENT TO THAT DECISION AND AS A RESULT OF REPRESENTATIONS TO THE BOARD A FURTHER DECISION WAS ISSUED ON APRIL 3, 1969 IN WHICH THE RETURNING OFFICER WAS DIRECTED TO SEAL THE BALLOT BOX AND TO CONDUCT AN EXAMINATION INTO THE DUTIES AND RESPONSIBILITIES OF TWO NAMED PERSONS. THE RETURNING OFFICER'S REPORT WAS ISSUED ON APRIL 22ND AND THE MATTER AGAIN LISTED FOR HEARING AT THE REQUEST OF THE APPLICANT IN ORDER TO ENABLE IT TO MAKE REPRESENTATIONS TO THE BOARD IN CONNECTION WITH THE SAID REPORT.

2. IN THE MARCH 27 DECISION THE BOARD FOUND THAT THERE WERE SIX EMPLOYEES IN THE BARGAINING UNIT ON THE DATE OF THE MAKING OF THE APPLICATION. ONE OF THESE SIX PERSONS WAS K. LEGGATE WHO WAS CLASSIFIED BY THE RESPONDENT AS A DUMP TRUCK DRIVER. THE BARGAINING UNIT SET BY THE BOARD INCLUDED DUMP TRUCK DRIVERS BUT NOT DUMP TRUCK DRIVERS EMPLOYED IN THE RESPONDENT'S AGGREGATE DIVISION AND OPERATING IN ITS GRAVEL PIT. THE EVIDENCE NOW BEFORE THE BOARD ESTABLISHES THAT LEGGATE WAS NOT AT WORK ON MARCH 7, 1969 THE DATE OF THE MAKING OF THE APPLICATION. THIS IS A CONSTRUCTION INDUSTRY CASE AND, ACCORDINGLY, LEGGATE WOULD NOT BE INCLUDED IN THE BARGAINING UNIT FOR PURPOSES OF THE COUNT. SEE KEystone Contractors Limited, O.L.R. B. MONTHLY REPORT, FEBRUARY 1966, p. 821.

3. WE ARE FURTHER SATISFIED ON THE EVIDENCE PRESENTLY BEFORE US THAT LEGGATE WAS ENGAGED FOR THE MAJORITY OF HIS TIME BETWEEN MARCH 10 AND APRIL 11 AS A DUMP TRUCK DRIVER OPERATING IN THE RESPONDENT'S GRAVEL PIT AND THAT AS SUCH WOULD NOT BE INCLUDED IN THE BARGAINING UNIT DURING THAT PERIOD. HOWEVER, IT WOULD APPEAR THAT LEGGATE DOES SOME WORK AS A DUMP TRUCK DRIVER WHICH IS SIMILAR TO WORK BEING PERFORMED BY DUMP TRUCK DRIVERS INCLUDED IN THE BARGAINING UNIT AND, SHOULD THE AMOUNT OF THIS WORK CHANGE SUBSTANTIALLY, IT MAY WELL BE THAT AT SOME FUTURE TIME LEGGATE WOULD FALL WITHIN THE DESCRIPTION OF THE BARGAINING UNIT DEFINED IN THE BOARD'S CERTIFICATE (SEE BELOW).

4. THE BARGAINING UNIT IN THE BOARD'S ENDORSEMENT DATED MARCH 27, 1969 INCLUDED THE CLASSIFICATION OF FUEL OR GAS TRUCK DRIVERS. AT THE TIME OF THE FIRST HEARING IN THIS CASE THERE WAS ONE SUCH DRIVER AND IT WAS THE UNDERSTANDING OF THE BOARD THAT HE WAS EMPLOYED TO SERVICE CONSTRUCTION SITES. THE EVIDENCE NOW BEFORE THE BOARD LEADS US TO THE CONCLUSION THAT HE IS NOT SO EMPLOYED FOR A MAJORITY OF HIS TIME. IN THESE CIRCUMSTANCES IT IS OUR VIEW THAT THE CLASSIFICATION FUEL OR GAS

TRUCK DRIVERS SHOULD NOT BE INCLUDED IN THE BARGAINING UNIT AND THE EMPLOYEE IN THAT CLASSIFICATION WOULD THEREFORE NOT BE INCLUDED ON THE LIST OF EMPLOYEES IN THE BARGAINING UNIT.

5. HAVING REGARD TO THE ABOVE CONSIDERATIONS THE BOARD NOW FINDS THAT ON THE DATE OF THE MAKING OF THE APPLICATION THERE WERE FOUR EMPLOYEES IN THE BARGAINING UNIT (SEE BELOW). THE APPLICANT HAS FILED EVIDENCE OF MEMBERSHIP FOR THREE OF THE SAID FOUR EMPLOYEES AND THUS HAS AS MEMBERS OVER FIFTY-FIVE PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT WHICH NO LONGER INCLUDES FUEL OR GAS TRUCK DRIVERS. THE FIRST DECISION OF THE BOARD DATED MARCH 27 IN WHICH A REPRESENTATION VOTE WAS DIRECTED WAS BASED ON A FINDING THAT THE APPLICANT HAD ONLY FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT AS MEMBERS.

6. IN THESE CIRCUMSTANCES THE BOARD MAKES THE FOLLOWING DIRECTION:

- (1) REVOKES THE LAST SENTENCE OF PARAGRAPH 6 OF ITS DECISION DATED MARCH 27, 1969 AND SUBSTITUTES THEREFOR THE FOLLOWING:

"ALTHOUGH THE FUEL TRUCK DRIVER DELIVERS GASOLINE TO EQUIPMENT ON RESPONDENT'S SITES, HE IS NOT SO ENGAGED FOR THE MAJORITY OF HIS WORKING DAY WHICH IS OCCUPIED IN PERFORMING TASKS NOT FALLING WITHIN THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT."

- (2) REVOKES PARAGRAPHS 7 TO 12 INCLUSIVE OF THE SAID DECISION AND SUBSTITUTES THEREFOR THE FOLLOWING:

7. HAVING REGARD TO THE PRINCIPLES AND FINDINGS OF THE BOARD IN CEDARHURST PAVING CO. LIMITED, O.L.R.B. MONTHLY REPORT, DECEMBER 1964, P. 442, THE BOARD FURTHER FINDS THAT ALL DUMP TRUCK DRIVERS AND TRACTOR-TRAILER DRIVERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

8. FOR PURPOSES OF CLARITY THE BOARD DECLARES THAT DUMP TRUCK DRIVERS EMPLOYED IN THE RESPONDENT'S AGGREGATE DIVISION AND OPERATING IN ITS GRAVEL PIT, CONCRETE PIPE DRIVERS EMPLOYED IN ITS CONCRETE PIPE DIVISION AND THE FUEL TRUCK DRIVER ARE NOT INCLUDED IN THE BARGAINING UNIT.

9. ON THE BASIS OF ALL THE EVIDENCE NOW BEFORE THE BOARD AND HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES THE BOARD IS SATISFIED THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 18, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

11. THE REGISTRAR IS DIRECTED NOT TO PROCEED WITH THE COUNTING OF THE BALLOTS CAST IN THE REPRESENTATION VOTE HELD ON APRIL 15, 1969. THE REGISTRAR WILL DESTROY THE BALLOTS CAST IN THE REPRESENTATION VOTE TAKEN IN THIS MATTER FOLLOWING THE EXPIRATION OF 30 DAYS FROM THE DATE OF THIS DECISION UNLESS A STATEMENT REQUESTING THAT THE BALLOTS SHOULD NOT BE DESTROYED IS RECEIVED BY THE BOARD FROM ONE OF THE PARTIES BEFORE THE EXPIRATION OF SUCH 30 DAY PERIOD.

15953-69-R: NURSES' ASSOCIATION SCARBOROUGH REGIONAL SCHOOL OF NURSING (APPLICANT) v. SCARBOROUGH REGIONAL SCHOOL OF NURSING (RESPONDENT).

BEFORE: H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: D.F.O. HERSEY, MISS ANNE S. GRIBBEN, MRS. JEAN EDWARDS FOR THE APPLICANT; C.G. RIGGS, MISS I. BROWN, FOR THE RESPONDENT.

DECISION OF H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER O. HODGES:
MAY 12, 1969.

• • •

2. THE BOARD FURTHER FINDS THAT ALL REGISTERED AND GRADUATE NURSES OF THE RESPONDENT, SAVE AND EXCEPT LIBRARIAN, ASSISTANT DIRECTOR, PERSONS ABOVE THE RANK OF ASSISTANT DIRECTOR, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON APRIL 10, 1969 THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

4. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DISSENT OF BOARD MEMBER J.E.C. ROBINSON: MAY 12, 1969.

I WOULD HAVE APPOINTED AN EXAMINER TO DETERMINE THE DUTIES AND RESPONSIBILITIES OF CURRICULUM CO-ORDINATOR. IT IS MY UNDERSTANDING THAT WHILE NO PERSON IS PRESENTLY NOW PERFORMING THIS RESPONSIBILITY EXCLUSIVELY, THESE DUTIES AND OTHERS ARE PRESENTLY BEING PERFORMED BY THE ASSISTANT DIRECTOR. IT WOULD NOT THEREFORE, BE DIFFICULT FOR THE EXAMINER TO DETERMINE THE RESPONSIBILITIES WHICH WILL BE PERFORMED BY THE CURRICULUM CO-ORDINATOR.

15959-69-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. CHARTERS PUBLISHING COMPANY, LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS P.J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: HARRY BODKIN FOR THE APPLICANT; S.R. CHARTERS FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 6, 1969.

• • •

2. THE APPLICANT HEREIN SEEKS CERTIFICATION AS BARGAINING AGENT FOR THE EMPLOYEES OF THE RESPONDENT IN A BARGAINING UNIT WHICH IT DESCRIBES AS "ALL DRIVERS OF THE RESPONDENT COMPANY IN BRAMPTON, ONTARIO".

3. THE RESPONDENT REQUESTED THAT THE UNIT BE DESCRIBED AS "ALL DRIVERS OF HIGHWAY VEHICLES" IN ORDER TO DISTINGUISH THE EMPLOYEES FROM OPERATORS OF SUCH INTERNAL VEHICLES AS FORK LIFT OPERATORS. THE APPLICANT MADE CLEAR THAT ITS REFERENCE WAS TO DRIVERS OF DELIVERY OR TRANSPORT VEHICLES.

4. EMPLOYEES OF THE RESPONDENT ARE REPRESENTED BY BRAMPTON TYPOGRAPHICAL UNION No. 987; BRAMPTON PRINTING PRESS MEN AND ASSISTANTS¹ No. 217; BRAMPTON INTERNATIONAL BROTHERHOOD OF BOOK BINDERS AND BINDERY WOMEN, LOCAL 159 OF BRAMPTON; TORONTO STEREOTYPER AND EL-CTROTYPER UNION, LOCAL 21; TORONTO MAILERS¹ UNION No. 5-I.T.U. THE EVIDENCE IS THAT, OTHER THAN OFFICE EMPLOYEES, THERE ARE THREE TRUCK DRIVERS, AN ELECTRICIAN AND TWO CARETAKERS WHO ARE NOT REPRESENTED BY A BARGAINING AGENT. THE APPLICANT, AS ALREADY INDICATED, SEEKS TO REPRESENT ONLY THE TRUCK DRIVERS. (IF THIS REQUEST WERE ACCEDED TO, IT WOULD LEAVE THE ELECTRICIAN AND CARETAKERS OUTSIDE OF WHAT WOULD THEN TOTAL SIX BARGAINING UNITS). IT IS THE POLICY OF THE BOARD NOT TO GRANT CERTIFICATION TO A UNIT OF TRUCK DRIVERS IN SITUATIONS OTHER THAN THE CONSTRUCTION AND CERTAIN SERVICE INDUSTRIES. WE, THEREFORE, FIND THAT THE BARGAINING UNIT SOUGHT BY THE APPLICANT IS NOT APPROPRIATE FOR COLLECTIVE BARGAINING IN THE CIRCUMSTANCES.

5. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

6. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT BRAMPTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS PRESENTLY COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND BRAMPTON TYPOGRAPHICAL UNION No. 987; BRAMPTON PRINTING PRESS MEN AND ASSISTANTS¹ No. 217; BRAMPTON INTERNATIONAL BROTHERHOOD OF BOOK BINDERS AND BINDERY WOMEN, LOCAL 159 OF BRAMPTON; TORONTO STEREOTYPER AND EL-CTROTYPER UNION, LOCAL 21; TORONTO MAILERS¹ UNION No. 5-I.T.U., CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON APRIL 11, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. A REPRESENTATION VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

9. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

10. THE MATTER IS REFERRED TO THE REGISTRAR.

15966-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. HEATH & SHERWOOD UNDERGROUND DRILLING DIVISION OF GLENGARRY FOREST PRODUCTS LIMITED (RESPONDENT).

BEFORE: H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: LORNE INGLE FOR THE APPLICANT; W.S. COOK, J. McBEAN FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 6, 1969.

* * *

3. THIS APPLICATION FOR CERTIFICATION WAS MADE WITH RESPECT TO CERTAIN EMPLOYEES IN THE RESPONDENT'S OPERATION AT THREE MINES, NORTH RANGE MINE, LITTLE STOBIE MINE AND KIRKWOOD MINE. THE RESPONDENT SUBMITTED THAT THE NORTH RANGE MINE WAS IN A BUILD-UP SITUATION AND THE APPLICATION WAS PREMATURE WITH RESPECT TO THIS MINE. AS AT THE DATE OF THE APPLICATION THERE WERE 8 EMPLOYEES AT THIS MINE ENGAGED IN DIAMOND DRILLING AND ON A FIXED CONTRACT BASIS, ONE DRILLING MACHINE WOULD BE ADDED EACH WEEK UNTIL THE MIDDLE OF JUNE AND EACH MACHINE REQUIRES 6 EMPLOYEES TO OPERATE IT. ON THIS BASIS THERE WOULD BE A TOTAL COMPLEMENT AT THIS MINE OF 48 EMPLOYEES BY THAT DATE. WE ARE SATISFIED THAT IN THESE CIRCUMSTANCES AS OF THE DATE OF THIS APPLICATION THERE WAS A BUILD UP SITUATION AT THE NORTH RANGE MINE. THIS FINDING, HOWEVER, DOES NOT RELATE TO THE OTHER TWO MINES INVOLVED IN THIS APPLICATION.

4. ACCORDINGLY, THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT THE LITTLE STOBIE MINE AND KIRKWOOD MINE IN THE DISTRICT OF SUDBURY SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 4 ABOVE, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON APRIL 15, 1969 THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

7. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT THE NORTH RANGE MINE IN THE DISTRICT OF SUDBURY SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

8. THE BOARD IS SATISFIED THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 7 AT THE TIME THE APPLICATION WAS MADE WERE MEMBERS OF THE APPLICANT ON APRIL 15, 1969 THE TERMINAL DATE FIXED FOR THIS APPLICATION.

9. THE APPLICATION AS IT APPLIES TO THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 7 ABOVE IS HEREBY DISMISSED.

15992-69-R: CROWE FOUNDRY LIMITED EMPLOYEE ASSOCIATION (APPLICANT)
v. CROWE FOUNDRY LIMITED (RESPONDENT).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: R.J. MILLER A.J. BRENTON AND J. OWENS FOR THE APPLICANT, NO ONE FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 5, 1969.

1. THIS IS AN APPLICATION FOR CERTIFICATION. THE APPLICANT WAS ADVISED BY THE REGISTRAR TO BE PREPARED AT THE HEARING OF THE APPLICATION TO SATISFY THE BOARD THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)J) OF THE LABOUR RELATIONS ACT.

2. ALFONSUS BRENTON GAVE THE FOLLOWING TESTIMONY RELATING TO THE FORMATION OF THE APPLICANT. THE INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION, LOCAL 23 AND THE RESPONDENT WERE PARTIES TO A COLLECTIVE AGREEMENT COVERING AN "ALL EMPLOYEE" UNIT AT THE RESPONDENT'S HESPELER PLANT. THE AGREEMENT EXPIRED ON DECEMBER

31st, 1967. FOLLOWING LENGTHY NEGOTIATIONS AND AFTER THE CONCILIATION PROCESS HAD BEEN EXHAUSTED, LOCAL 23 CALLED A LAWFUL STRIKE ON APRIL 3RD, 1968. THE UNION MAINTAINED A PICKET LINE AT THE PLANT FROM THE COMMENCEMENT OF THE STRIKE UNTIL NOVEMBER 4TH, 1968, ON WHICH DATE THE PICKETS WERE WITHDRAWN. NO COLLECTIVE AGREEMENT HAS BEEN ENTERED INTO BY LOCAL 23 AND THE RESPONDENT.

3. SOME TIME AFTER THE STRIKE COMMENCED, MEETINGS WERE HELD AMONG GROUPS OF EMPLOYEES ON FOUR CONSECUTIVE DAYS DURING LUNCH BREAKS. SOME OF THE MEETINGS WERE HELD IN THE RESPONDENT'S BOARD ROOM AND OTHERS OUTSIDE THE FOUNDRY. IT APPEARS THAT THE PURPOSE OF THE MEETINGS WAS TO DISCUSS THE POSSIBILITY OF FORMING AN ASSOCIATION TO REPRESENT THE EMPLOYEES IN THEIR RELATIONS WITH THE RESPONDENT. A FURTHER MEETING OF A GROUP OF EMPLOYEES WAS HELD IN THE CANADIAN LEGION HALL IN GUELPH ON JULY 7TH, 1968. AT THIS MEETING, AN EXECUTIVE COMMITTEE FOR THE ASSOCIATION WAS APPOINTED. THE EMPLOYEES WERE PARTICULARLY INTERESTED IN SECURING FROM THE RESPONDENT A LETTER GUARANTEEING THAT ANY NEW EMPLOYEES OR EMPLOYEES WHO RETURNED TO WORK DURING THE COURSE OF THE STRIKE WOULD HAVE THE SAME TERMS AND CONDITIONS OF EMPLOYMENT THAT THE RESPONDENT HAS OFFERED TO LOCAL 23.

4. IT APPEARS THAT SOME TIME AFTER THE JULY 7TH, 1968 MEETING, BRENTON MET WITH MEMBERS OF MANAGEMENT AND ARRANGED FOR THE CHECK-OFF OF \$1.50 PER WEEK FROM THE PAY OF EACH EMPLOYEE TO BE PAID INTO A "BENEVOLENT FUND" ESTABLISHED BY THE EXECUTIVE COMMITTEE OF THE ASSOCIATION. OF THE \$6.00 PER EMPLOYEE THAT WAS PAID INTO THE FUND EACH MONTH, \$2.00 WAS FOR ENTERTAINMENT PURPOSES, \$2.00 WAS FOR INSURANCE, AND \$2.00 WAS TO FINANCE THE ASSOCIATION, I.E. THE RENTAL OF HALLS FOR MEETINGS, THE PRINTING OF MEMBERSHIP CARDS, AND THE PAYMENT OF LEGAL FEES. THE RESPONDENT COMMENCED THE CHECK-OFF IN JULY AND IT HAS CONTINUED TO THE PRESENT TIME.

5. IN DECEMBER OF 1968, A NOTICE WAS POSTED ON THE NOTICE BOARD OF THE COMPANY WITH THE PERMISSION OF THE FOUNDRY MANAGER ANNOUNCING A MEETING OF THE ASSOCIATION AT THE LEGION HALL ON DECEMBER 10TH. AT THIS MEETING, WHICH WAS ATTENDED BY 42 EMPLOYEES, A PRESIDENT AND SECRETARY TREASURER FOR THE ASSOCIATION WERE ELECTED. THE EMPLOYEES PRESENT PAID A \$1.00 INITIATION FEE AND WERE GIVEN A MEMBERSHIP CARD WHICH READS:

CROWE FOUNDRY EMPLOYEES ASSOCIATION
HESPELER, ONTARIO
(THIS IS TO CERTIFY THAT)

HAS AUTHORIZED THE PAYMENT OF HIS DUES BY

CHECKOFF -- DURING.....

AND IS ENTITLED, SO LONG AS HE REMAINS A MEMBER IN GOOD STANDING, TO ALL THE PRIVILEGES PROVIDED BY THE ASSOCIATION

.....
SECY.-TREAS PRESIDENT

OTHER EMPLOYEES SUBSEQUENTLY PAID THE \$1.00 MEMBERSHIP FEE AND WERE PROVIDED WITH THE ABOVE MEMBERSHIP CARD.

6. BRENTON, WHO WAS ELECTED PRESIDENT OF THE ASSOCIATION, CALLED A FURTHER MEETING ON MARCH 23RD, 1969. A NOTICE OF THE MEETING WAS AGAIN POSTED ON THE COMPANY'S BULLETIN BOARD WITH THE PERMISSION OF THE FOUNDRY MANAGER. AT THIS MEETING A CONSTITUTION, WHICH WAS PREPARED BY A SOLICITOR RETAINED FOR THIS PURPOSE, WAS ACCEPTED BY THE 49 EMPLOYEES PRESENT. THE OFFICERS PROVIDED FOR IN THE CONSTITUTION WERE THEN ELECTED. EACH EMPLOYEE THEREUPON COMPLETED AN "APPLICATION FOR MEMBERSHIP" FORM IN THE ASSOCIATION AND WAS ISSUED A RECEIPT FOR A \$1.00 PAYMENT OF INITIATION FEES. THE EMPLOYEES, IN FACT, DID NOT PAY AN ADDITIONAL DOLLAR. RATHER THE RECEIPT WAS FOR THE \$1.00 THEY HAD PAID EARLIER AT THE TIME THEY RECEIVED MEMBERSHIP CARDS IN THE ASSOCIATION. THE CONSTITUTION PROVIDES FOR THE PAYMENT OF \$3.00 PER MONTH MEMBERSHIP DUES. ACCORDINGLY, OUT OF THE \$6.00 PER MONTH CHECKED OFF BY THE RESPONDENT, \$3.00 RATHER THAN \$2.00 WERE HENCEFORTH DESIGNATED FOR THE ASSOCIATION.

7. SECTION 10 OF THE LABOUR RELATIONS ACT READS:

THE BOARD SHALL NOT CERTIFY A TRADE UNION IF ANY EMPLOYER OR ANY EMPLOYERS' ORGANIZATION HAS PARTICIPATED IN ITS FORMATION OR ADMINISTRATION OR HAS CONTRIBUTED FINANCIAL OR OTHER SUPPORT TO IT OR IF IT DISCRIMINATES AGAINST ANY PERSON BECAUSE OF HIS RACE, CREED, COLOUR, NATIONALITY, ANCESTRY OR PLACE OF ORIGIN.

IN THE INSTANT CASE, THE RESPONDENT ALLOWED EMPLOYEES TO USE THE COMPANY'S BOARD ROOM FOR PURPOSES OF ORGANIZING THE ASSOCIATION AND PERMITTED NOTICES OF MEETINGS TO BE POSTED ON THE COMPANY'S BULLETIN BOARD. FURTHER THE RESPONDENT VOLUNTARILY CHECKED OFF DUES WITH WHICH THE ASSOCIATION WAS FINANCED. IN LIGHT OF ALL

THESE CIRCUMSTANCES, THE BOARD IS SATISFIED THAT THE CONDUCT OF THE RESPONDENT CONSTITUTES THE TYPE OF SUPPORT CONTEMPLATED BY SECTION 10 OF THE ACT (SEE BASIC STRUCTURE STEEL FABRICATORS LIMITED CASE, O.L.R.B. MONTHLY REPORT, MARCH 1966, p. 888, AND KEMP PRODUCTS LIMITED CASE, O.L.R.B. MONTHLY REPORT, APRIL 1966, p. 39). THE BOARD ACCORDINGLY FINDS THAT THE APPLICANT ASSOCIATION CANNOT BE CERTIFIED UNDER THE ACT.

8. THE APPLICATION IS THEREFORE DISMISSED.

16003-69-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE HALTON COUNTY BOARD OF EDUCATION (RESPONDENT) v. EMPLOYEE (OBJECTOR).

BEFORE: J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: E.A. MOYNES AND F.L. TAYLOR FOR THE APPLICANT, E.L. STRINGER, B. LINDLEY AND H. LISHMAN FOR THE RESPONDENT, NO ONE FOR THE OBJECTOR.

DECISION OF THE BOARD: MAY 20, 1969.

• • •

3. AT THE HEARING IN THIS MATTER, THE RESPONDENT TOOK THE POSITION THAT IT WAS NOT APPROPRIATE TO INCLUDE BUS DRIVERS AND CAFETERIA HELP IN A BARGAINING UNIT WITH CARETAKERS. IN THE BOARD OF EDUCATION FOR THE CITY OF OWEN SOUND CASE, O.L.R.B. MONTHLY REPORT, JULY 1968, p. 335, THE BOARD, AFTER HAVING FIRST GIVEN FULL CONSIDERATION TO THE PROBLEM OF DESCRIBING BARGAINING UNITS FOR BOARDS OF EDUCATION AND HAVING NOTED THAT UP UNTIL THAT TIME THERE HAD BEEN NO CONSISTENT PRACTICE OF DESCRIBING SUCH BARGAINING UNITS, ADOPTED FOR THE FIRST TIME A DESCRIPTION OF BARGAINING UNITS FOR BOARDS OF EDUCATION WHICH READS "ALL EMPLOYEES ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS" WITH CERTAIN EXCEPTIONS. IT WAS INTENDED THAT THIS UNIT INCLUDE SUCH PEOPLE AS JANITORS, CARETAKERS, CUSTODIAL PERSONNEL, BUS DRIVERS AND CAFETERIA HELP. BY THE USE OF THE TERMINOLOGY IN THE DESCRIPTION, THE BOARD INTENDED TO EXCLUDE FROM THE BARGAINING UNIT SUCH PERSONS AS PROFESSIONAL TEACHING STAFF, AUDIO-VISUAL TECHNICIANS, TEACHERS' ASSISTANTS AND OTHER SEMI-PROFESSIONAL PERSONNEL WHO ARE ENGAGED IN INSTRUCTING OR ACTIVELY ENGAGED IN AND CONNECTED WITH THE EDUCATION OF STUDENTS. IT HAS BEEN THE BOARD'S USUAL PRACTICE SINCE THAT TIME TO DESCRIBE THE BARGAINING UNIT FOR SCHOOL BOARDS IN THE MANNER SET OUT ABOVE.

THERE IS NOTHING BEFORE THE BOARD IN THE INSTANT CASE TO CAUSE THE BOARD TO DEPART FROM ITS USUAL PRACTICE WHICH WAS FIRST ADOPTED IN JULY 1968.

4. THE BOARD THEREFORE FINDS THAT ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERVISOR, PERSONS ABOVE THE RANK OF SUPERVISOR, AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. FOR THE PURPOSE OF CLARITY, THE BOARD DECLARES THAT SINCE THERESA BOCLAIR, RUTH DAVIES, AUDREY RAMEY AND MARGARET KOVACS ARE ACTIVELY ENGAGED IN INSTRUCTING STUDENTS IN THE OPERATION OF A CAFETERIA AS PART OF THEIR VOCATIONAL TRAINING AT THE RESPONDENT'S GENERAL BROCK HIGH SCHOOL, THEY ARE PERSONS WHO ARE NOT APPROPRIATE FOR INCLUSION IN THE BARGAINING UNIT DEFINED ABOVE.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON APRIL 21ST, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

8. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

9. THE MATTER IS REFERRED TO THE REGISTRAR.

16007-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. L. J. BENDER OIL HEATING (RESPONDENT).

BEFORE: H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS P.J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: MICHAEL O'BRIEN FOR THE APPLICANT; R. S. CASWELL FOR THE RESPONDENT.

DECISION OF H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER
P.J. O'KEEFFE: MAY 20, 1969.

• • •

3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, SALES STAFF, PERSONS REGULARLY EMPLOYED TWENTY-FOUR HOURS PER WEEK OR LESS, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON APRIL 21, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

5. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DISSENT OF BOARD MEMBER J.E.C. ROBINSON: MAY 20, 1969.

WHILE THE APPLICANT'S NAME IS PRESENT ON THE "MEMBERSHIP CARD OIL BURNER SERVICEMEN'S ASSOCIATION", IT WOULD APPEAR TO ME THAT THE MEMBERSHIP EVIDENCE FILED IN SUPPORT OF THE APPLICATION BY THE LOCAL UNION, CLEARLY INDICATES (BOTH IN THE APPLICATION PORTION OF THE CARD AND IN THE RECEIPT PORTION OF THE CARD) THAT THE INDIVIDUAL MEMBERS WERE MAKING APPLICATION IN, AND PAYING MEMBERSHIP FEES TO, THE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA RATHER THAN IN THIS APPLICANT LOCAL.

THAT BEING SO, I WOULD NOT HAVE ACCEPTED THESE CARDS AS BEING EVIDENCE OF MEMBERSHIP IN THE APPLICANT.

16016-69-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) v. HONEYWELL CONTROLS LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: ROBERT WHITE, HOWARD POWERS, JACK PAWSON FOR THE APPLICANT; F.G. HAMILTON, J.G. BETTS FOR THE RESPONDENT; LUTHER C. WELSH, DAVID W. ROBINSON FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: MAY 12, 1969.

• • •

2. AT THE HEARING THE RESPONDENT SUBMITTED THAT THIS APPLICATION WAS PREMATURE IN THAT THE OPERATIONS OF THE RESPONDENT CONCERNED ARE IN A BUILD-UP SITUATION SO THAT A SUFFICIENT REPRESENTATIVE NUMBER OF EMPLOYEES WERE NOT PRESENT AS OF THE DATE OF THE APPLICATION AND SHOULD THEREFORE BE DISMISSED. ACCORDING TO THE REPRESENTATIONS MADE ON BEHALF OF THE RESPONDENT A NEW PLANT WAS OPENED IN BOWMANVILLE IN SEPTEMBER 1968 TO PRODUCE AN ENTIRELY NEW PRODUCT FOR THE RESPONDENT. THE RESPONDENT IS AS OF THE DATE OF THIS APPLICATION, COMPLETING ON EXPANSION OF THE FIRST PLANT TO DOUBLE ITS CAPACITY. AT THE END OF 1968 THERE WERE 28 EMPLOYEES AND AS OF THE DATE OF THIS APPLICATION THERE WERE 72 EMPLOYEES INCLUDED IN THE BARGAINING UNIT PROPOSED BY THE APPLICANT. THE RESPONDENT INDICATES THAT A GRADUAL INCREASE OF PERSONNEL WILL OCCUR WITH A TOTAL BY JUNE 30TH OF 100 AND BY SEPTEMBER 140 AT WHICH POINT THE NUMBER WILL LEVEL OUT AND IT IS SUGGESTED THAT THIS WOULD BE THE APPROXIMATE TOTAL NUMBER OF EMPLOYEES IN THIS UNIT. THE FIRST EMPLOYEE WAS ENGAGED SOME TIME IN SEPTEMBER 1968 AND PRODUCTION TO SOME DEGREE COMMENCED IN THE FOLLOWING MONTH. BY THE DATE OF THE APPLICATION ALL OF THE CLASSIFICATIONS WITHIN THE BARGAINING UNIT WERE OCCUPIED WITH THE EXCEPTION OF WHATEVER NEW CLASSIFICATIONS MAY BE CREATED TO DEAL WITH THE MORE SOPHISTICATED PRODUCT DEVELOPMENT.

3. IN THE ABOVE CIRCUMSTANCES AND HAVING PARTICULAR REGARD TO THE FACT THAT MORE THAN HALF OF THE PROJECTED NUMBER OF EMPLOYEES WITHIN THE BARGAINING UNIT WERE EMPLOYED AS OF THE DATE OF THE APPLICATION AND ALL THE CLASSIFICATIONS CURRENTLY FALLING WITHIN THE BARGAINING UNIT WERE FILLED, WE FIND THAT AS OF THE DATE OF THE APPLICATION THE PERSONS THEN EMPLOYED CONSTITUTED A SUBSTANTIAL AND REPRESENTATIVE PORTION OF THE WORK FORCE TO BE EMPLOYED. WE THEREFORE FIND THAT THIS APPLICATION IS NOT PREMATURE AND ACCORDINGLY, THE REQUEST OF THE RESPONDENT TO DISMISS THE APPLICATION IS DENIED.

4. BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT BOWMANVILLE SAVE AND EXCEPT FOREMEN, SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN, OR SUPERVISOR, OFFICE AND SALES STAFF, ENGINEERING, LABORATORY AND DESIGN PERSONNEL, AND HAVING REGARD TO THE AGREEMENT OF THE PARTIES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD OR ON A CO-OPERATIVE TRAINING BASIS WITH A UNIVERSITY, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON APRIL 22, 1969 THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

16043-69-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS,, LOCAL UNION 880, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. NORTH AMERICAN PLASTICS CO. LIMITED (RESPONDENT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW (INTERVENER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS H.F. IRWIN AND P.J. O'KEEFFE.

APPEARANCES AT THE HEARING: W.W. TILLER FOR THE APPLICANT; F.W. KNIGHT FOR THE RESPONDENT; B. CHERCOVER FOR THE INTERVENER.

* * *

2. THIS IS AN APPLICATION FOR CERTIFICATION (HEREINAFTER REFERRED TO AS "THE SUBSEQUENT APPLICATION"). IT REFERS TO ALL TRUCK DRIVERS OF THE RESPONDENT WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT. THE DATE UPON WHICH THE APPLICATION WAS MADE WAS APRIL 18, 1969.

3. SOMETIMES PRIOR TO THE HEARING DATE OF THE SUBSEQUENT APPLICATION, THE BOARD HEARD AN APPLICATION (HEREINAFTER REFERRED TO AS "THE ORIGINAL APPLICATION") FOR A DECLARATION THAT THE INTERVENER HEREIN NO LONGER REPRESENTS EMPLOYEES OF THE RESPONDENT IN A BARGAINING UNIT WHICH INCLUDES THE EMPLOYEES AFFECTED BY THE SUBSEQUENT APPLICATION (BOARD FILE NO. 15422-68-R). THE TERMINAL DATE FOR THE ORIGINAL APPLICATION WAS DECEMBER 12, 1968 WHICH WAS, OF COURSE, PRIOR TO THE DATE OF THE MAKING OF THE SUBSEQUENT APPLICATION.

4. THE BOARD HAS NOT AT THIS TIME ISSUED A FINAL DECISION IN THE ORIGINAL APPLICATION. IN ADDITION, THE SUBSEQUENT APPLICATION IS CLEARLY MADE WITH RESPECT TO SOME OF THE EMPLOYEES AFFECTED BY THE ORIGINAL APPLICATION.

5o. HAVING REGARD, THEREFORE, TO ALL OF THE FOREGOING CIRCUMSTANCES AND PURSUANT TO THE PROVISIONS OF SECTION 77(3)(B) OF THE LABOUR RELATIONS ACT, THE BOARD HEREBY POSTPONES CONSIDERATION OF THE SUBSEQUENT APPLICATION UNTIL A FINAL DECISION HAS BEEN ISSUED ON THE ORIGINAL APPLICATION AT WHICH TIME THE SUBSEQUENT APPLICATION WILL BE CONSIDERED BUT SUBJECT TO ANY FINAL DECISION ISSUED BY THE BOARD ON THE ORIGINAL APPLICATION.

16114-69-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. CARL & DON LECLAIR LIMITED (RESPONDENT) v. TEAMSTERS, LOCAL UNION 141, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS WAREHOUSEMEN AND HELPERS OF AMERICA (INTERVENER).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: C.J. VANDERLAAN AND G. VANDEZANDE FOR THE APPLICANT, NO ONE FOR THE RESPONDENT, B. CHERCOVER AND E. WINEGARDEN FOR THE INTERVENER.

DECISION OF THE BOARD: MAY 23, 1969.

• • •

3. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT. THE INTERVENER SUBMITS THAT IT HOLDS THE BARGAINING RIGHTS FOR THE EMPLOYEES CONCERNED. THE INTERVENER FURTHER SUBMITS THE CONCILIATION SERVICES WERE GRANTED TO THE INTERVENER WITH RESPECT TO THOSE EMPLOYEES ON APRIL 29TH, 1969, THE DATE OF THE MAKING OF THE APPLICATION, AND THAT ACCORDINGLY THE APPLICATION IS UNTIMELY.

4. THE ONLY PERSON WHO TESTIFIED AT THE HEARING IN THIS MATTER WAS EVERETT WINEGARDEN, A BUSINESS REPRESENTATIVE AND VICE-PRESIDENT OF THE INTERVENER. BRIEFLY, HIS EVIDENCE IS AS FOLLOWS. IN AUGUST OF 1967, A BODY KNOWN AS THE MID-ELGIN TRUCKERS ASSOCIATION (HEREINAFTER REFERRED TO AS THE ASSOCIATION) WAS FORMED. ONE OF THE MEMBERS OF THE ASSOCIATION IS THE RESPONDENT. THE ASSOCIATION, IMMEDIATELY UPON ITS FORMATION, VOLUNTARILY RECOGNIZED THE INTERVENER AS BARGAINING AGENT FOR THE EMPLOYEES OF THE EMPLOYER MEMBERS OF THE ASSOCIATION. THE ASSOCIATION AND THE INTERVENER BARGAINED AT A SERIES OF FOUR MEETINGS EXTENDING OVER A PERIOD OF A YEAR FROM AUGUST 1967 TO AUGUST 1968. NO COLLECTIVE AGREEMENT, HOWEVER, WAS ENTERED INTO BY THE PARTIES. IN MARCH OF 1969, THE INTERVENER APPLIED TO THE MINISTER FOR THE APPOINTMENT OF A CONCILIATION OFFICER.

5. THE EVIDENCE OF WINEGARDEN CAN ONLY BE DESCRIBED AS VAGUE AND UNSATISFACTORY. IN THE RESULT, WE HAVE MISGIVINGS AS TO THE STATUS OF THE ASSOCIATION, THE RELATIONSHIP OF THE RESPONDENT TO THAT BODY, AND THE ENTITLEMENT OF THE INTERVENER TO REPRESENT THE EMPLOYEES OF THE RESPONDENT. NOTWITHSTANDING THESE RESERVATIONS, IN THE ABSENCE OF EVIDENCE TO THE CONTRARY, WE ARE IMPELLED TO FIND, FOR PURPOSES OF THIS APPLICATION, THAT THE ASSOCIATION WAS PROPERLY FORMED, THAT THE RESPONDENT IS A MEMBER OF THE ASSOCIATION, THAT THE ASSOCIATION IS AUTHORIZED TO BARGAIN ON BEHALF OF THE RESPONDENT AND THAT THE INTERVENER HOLDS THE BARGAINING RIGHTS FOR THE EMPLOYEES OF THE RESPONDENT WITH WHOM WE ARE HERE CONCERNED.

6. WE COME NOW TO THE QUESTION OF THE TIMELINESS OF THE APPLICATION. FIRST OF ALL, BASED ON THE DOCUMENTARY EVIDENCE FILED AT THE HEARING, IT IS CLEAR THAT THE APPOINTMENT OF A CONCILIATION OFFICER BY THE MINISTER WAS MADE IN THE LETTER ADDRESSED TO THE INTERVENER DATED MAY 6TH, 1969, AND NOT BY A LETTER DATED APRIL 29TH, 1969, AS ASSERTED BY THE INTERVENER. IN ANY EVENT, THE TIME LIMITATIONS UPON MAKING AN APPLICATION FOR CERTIFICATION IMPOSED BY SECTION 5 AND SECTION 46 OF THE ACT ONLY APPLY WHERE A TRADE UNION HAS ACQUIRED BARGAINING RIGHTS BY CERTIFICATION OR WHERE NOTICE HAS BEEN GIVEN BY ONE OF THE PARTIES FOR THE RENEWAL OF A COLLECTIVE AGREEMENT. NEITHER OF THESE SECTIONS IS APPLICABLE HERE AS THE INTERVENER ACQUIRED ITS BARGAINING RIGHTS BY VOLUNTARY RECOGNITION. ACCORDINGLY, EVEN IF A CONCILIATION OFFICER HAD BEEN APPOINTED BY THE MINISTER AT OR PRIOR TO THE TIME THAT THE INSTANT APPLICATION WAS MADE, SUCH AN APPOINTMENT WOULD NOT BE A BAR TO THE APPLICATION.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY HEREINAFTER DESCRIBED, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 7TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. A REPRESENTATION VOTE WILL BE TAKEN OF ALL EMPLOYEES IN THE FOLLOWING VOTING CONSTITUENCY:

ALL EMPLOYEES OF THE RESPONDENT AT MOUNT BRYDGES, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF.

9. ALL EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.
10. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT AND THE INTERVENER.
11. THE MATTER IS REFERRED TO THE REGISTRAR.

INDEXED ENDORSEMENTS - TERMINATION

15839-68-R: LOUIS JOSEPH ASSELTINE, WILFRED JAMES CALLOW AND KATHLEEN MARY CAMP ON BEHALF OF THE EMPLOYEES OF PROCTOR-LEWYT DIVISION OF SCM (CANADA) LIMITED, (FORMERLY PROCTOR-SILEX LIMITED) (APPLICANTS) v. INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO-CLC (RESPONDENT) v. PROCTOR-LEWYT DIVISION OF SCM (CANADA) LIMITED (FORMERLY PROCTOR-SILEX LIMITED) (INTERVENER).

BEFORE: O.B. SHIME, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: JACK H. WARD FOR THE APPLICANTS; IAN SCOTT, JAMES DONOFRIO FOR THE RESPONDENT; D. CHURCHILL-SMITH, C. N. SELICK FOR THE INTERVENER.

DECISION OF O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBER H.F. IRWIN: MAY 1, 1969.

1. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING BARGAINING RIGHTS BROUGHT BY EMPLOYEES OF THE INTERVENER PURSUANT TO SECTION 43 OF THE LABOUR RELATIONS ACT.

2. WE HEARD TESTIMONY AS TO THE ORIGINATION OF THE DOCUMENT FILED BY THE APPLICANTS AND THE MANNER IN WHICH SIGNATURES WERE OBTAINED. MR. SCOTT ON BEHALF OF THE RESPONDENT, SKILFULLY CROSS-EXAMINED THE APPLICANTS WITH RESPECT TO A MEETING THAT MEMBERS OF MANAGEMENT HELD WITH ITS EMPLOYEES, WHICH WAS HELD SUBSEQUENT TO THIS APPLICATION HAVING BEEN MADE. IT APPEARED THAT THE WITNESSES AND PARTICULARLY MISS KATHLEEN CAMP AND MR. JOSEPH ASSELTINE WERE SOMEWHAT EVASIVE WHEN CROSS-EXAMINED ON THE ISSUE OF THE MEETING. THE RESPONDENT THEN SUBMITTED THAT HAVING REGARD TO THE QUALITY OF THE APPLICANTS' TESTIMONY WE SHOULD NOT ACCENT THEIR EVIDENCE

AS IT RELATED TO THE ORIGINATION AND CIRCULATION OF THE DOCUMENTS FILED. THERE IS NO EVIDENCE DISCLOSING PARTICIPATION OR INFLUENCE BY MANAGEMENT IN THE ORIGINATION AND CIRCULATION OF THE DOCUMENTS FILED BY THE APPLICANTS NOR IS THERE ANY EVIDENCE THAT THE DESIRES OF THE EMPLOYEES ARE NOT VOLUNTARILY RECORDED. WHILE WE WERE SOMEWHAT CONCERNED ABOUT THE QUALITY OF THE EVIDENCE AS IT RELATED TO THE ISSUE OF THE MEETING, AFTER REVIEWING ALL OF THE EVIDENCE WE ARE SATISFIED THAT THE EVIDENCE OF THE APPLICANTS WITH RESPECT TO THE ORIGINATION AND CIRCULATION OF THE MATERIAL FILED HAS NOT BEEN IMPEACHED. WE ARE FURTHER SATISFIED THAT THE WRITTEN DOCUMENTS FILED REFLECT THE VOLUNTARY DESIRES OF THE EMPLOYEES.

3. WE ARE SATISFIED ON THE BASIS OF ALL THE EVIDENCE THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF THE INTERVENER IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE HAD VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISHED TO BE REPRESENTED BY THE RESPONDENT UNION ON MARCH 19TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING THE NUMBER OF PERSONS WHO HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION UNDER SECTION 43(3) OF THE SAID ACT.

4. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE INTERVENER. THOSE ELIGIBLE TO VOTE ARE ALL EMPLOYEES OF PROCTOR-LEWYT DIVISION OF SCM (CANADA) LIMITED (FORMERLY PROCTOR-SILEX LIMITED) AT PICTON SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN.

5. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE RESPONDENT.

6. THE MATTER IS REFERRED TO THE REGISTRAR.

DISSENT OF BOARD MEMBER O. HODGES: MAY 1, 1969.

I DISSENT.

THE TESTIMONY OF THE APPLICANT WITNESSES FAILS TO CONVINCE ME THAT THEIR PETITION IS FREE OF INSPIRATION AND INFLUENCE BY MANAGEMENT.

THE RESPONSE OF CERTAIN OF THESE WITNESSES APPEARED EVASIVE AND NOT "THE WHOLE TRUTH" WHEN QUESTIONED ABOUT MATTERS OF WHICH THEY COULD REASONABLY BE EXPECTED TO HAVE MORE COMPLETE KNOWLEDGE.

I WOULD HAVE DISMISSED THE APPLICATION.

16117-69-R: Rocco Lallone & Marino Cimadomore EMPLOYEES OF MODERN FOOTWEAR (APPLICANTS) v. FUR, LEATHER AND SHOE UNION (RESPONDENT).

(RE: MODERN FOOTWEAR COMPANY, A DIVISION OF JACK SCHWEBEL LIMITED AT METROPOLITAN TORONTO).

BEFORE: J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

DECISION OF THE BOARD: MAY 5, 1969.

1. THE APPLICANTS HAVE APPLIED, PURSUANT TO THE PROVISIONS OF SECTION 43 OF THE LABOUR RELATIONS ACT, ON APRIL 28TH, 1969 FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT WITH RESPECT TO THAT UNIT OF EMPLOYEES OF MODERN FOOTWEAR COMPANY AT METROPOLITAN TORONTO REPRESENTED BY THE RESPONDENT UNION.

2. IT WOULD APPEAR THAT THE RESPONDENT UNION WAS CERTIFIED FOR ALL EMPLOYEES OF MODERN FOOTWEAR COMPANY, A DIVISION OF JACK SCHWEBEL LIMITED AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF ON THE 12TH DAY OF APRIL, 1967. A COLLECTIVE AGREEMENT WAS APPARENTLY ENTERED INTO BETWEEN THE UNION AND THE COMPANY WHICH EXPIRED ON NOVEMBER 1ST, 1968. IT WOULD FURTHER APPEAR THAT A CONCILIATION OFFICER WAS APPOINTED BY THE MINISTER TO ASSIST THE RESPONDENT AND MODERN FOOTWEAR COMPANY, A DIVISION OF JACK SCHWEBEL LIMITED ON JANUARY 24TH, 1969, AND THAT THE CONCILIATION OFFICER MET WITH THE PARTIES, THE LAST MEETING BEING HELD ON MARCH 19TH, 1969.

3. IT WOULD FURTHER APPEAR THAT AS OF THE DATE THE APPLICATION WAS MADE, A CONCILIATION OFFICER HAD NOT MADE A RECOMMENDATION TO THE MINISTER WITH RESPECT TO THE MATTER REFERRED TO HIM AND THE MINISTER ACCORDINGLY HAS NOT INFORMED THE PARTIES THAT HE DOES NOT DEEM IT DESIRABLE TO APPOINT A CONCILIATION BOARD.

4. SECTION 43 OF THE ACT PROVIDES THAT AN APPLICATION FOR TERMINATION CAN ONLY BE MADE PURSUANT TO THAT SECTION PRIOR TO THE TIME AT WHICH THE MINISTER HAS APPOINTED A CONCILIATION OFFICER.

5. SECTION 46(2) OF THE ACT PROVIDES THAT AN APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF A TRADE UNION CANNOT BE MADE WHERE A CONCILIATION OFFICER HAS BEEN APPOINTED BY THE MINISTER UNLESS FOLLOWING SUCH APPOINTMENT:

- (a) AT LEAST TWELVE MONTHS HAVE ELAPSED FROM THE DATE OF THE APPOINTMENT OF THE CONCILIATION OFFICER OR A MEDIATOR; OR
- (b) A CONCILIATION BOARD OR A MEDIATOR HAS BEEN APPOINTED AND THIRTY DAYS HAVE ELAPSED AFTER THE REPORT OF THE CONCILIATION BOARD OR THE MEDIATOR HAS BEEN RELEASED BY THE MINISTER TO THE PARTIES; OR
- (c) THIRTY DAYS HAVE ELAPSED AFTER THE MINISTER HAS INFORMED THE PARTIES THAT HE DOES NOT DEEM IT DESIRABLE TO APPOINT A CONCILIATION BOARD.

WHICHEVER IS LATER.

6. IT THEREFORE APPEARS TO THE BOARD FROM THE FACTS SET OUT ABOVE THAT NONE OF THE TIME PERIODS REFERRED TO IN THE PRECEDING PARAGRAPH COULD HAVE ELAPSED BETWEEN THE DATE OF THE APPOINTMENT OF THE CONCILIATION OFFICER AND THE DATE OF THE MAKING OF THIS APPLICATION.

7. IF THE BOARD IS CORRECT IN ITS ASSUMPTION THAT THE ABOVE ARE THE FACTS OF THIS CASE IT WOULD FOLLOW, PURSUANT TO THE PROVISIONS OF SECTION 46(2) OF THE ACT, THAT THIS APPLICATION IS UNTIMELY.

8. THE BOARD ACCORDINGLY DIRECTS THE APPLICANTS TO ADVISE THE BOARD IN WRITING ON OR BEFORE THE 13TH DAY OF MAY, 1969, WHETHER, IN THEIR OPINION, THE BOARD IS IN ERROR IN ASSUMING THAT THE FACTS OF THIS CASE ARE AS SET OUT ABOVE. IF THE APPLICANTS ARE OF OPINION THAT THE BOARD IS IN ERROR THEY WILL INCLUDE IN THEIR ADVICE TO THE BOARD A SUMMARY OF THE FACTS IN SUPPORT OF THEIR OPINION.

9. THIS APPLICATION WILL NOT BE PROCESSED FURTHER PENDING THE RECEIPT OF SUCH ADVICE AND SUMMARY OF FACTS FROM THE APPLICANTS.

10. IF THE BOARD DOES NOT RECEIVE SUCH ADVICE SUPPORTED BY A SUMMARY OF FACTS AS HEREIN DIRECTED, THIS APPLICATION WILL BE DISPOSED OF PURSUANT TO THE PROVISIONS OF SECTION 46 OF THE BOARD'S RULES OF PROCEDURE WITHOUT FURTHER NOTICE TO THE APPLICANTS.

DECISION OF THE BOARD: MAY 14, 1969.

1. IN ITS DECISION DATED MAY 5TH, 1969 IN THIS MATTER, THE BOARD DIRECTED THAT THE APPLICANTS ADVISE THE BOARD IN WRITING ON OR BEFORE MAY 13TH, 1969 WHETHER IN THEIR OPINION THE BOARD WAS IN ERROR IN ASSUMING THAT THE FACTS OF THIS CASE ARE AS SET OUT IN THE BOARD'S DECISION OF MAY 5TH, 1969.

2. SINCE THE BOARD HAS NOT RECEIVED ANY COMMUNICATION FROM THE APPLICANTS AS DIRECTED, THE BOARD IS SATISFIED THAT PURSUANT TO THE PROVISIONS OF SECTION 46(2) OF THE LABOUR RELATIONS ACT, THIS APPLICATION IS UNTIMELY.

3. IN VIEW OF THESE CIRCUMSTANCES AND IN ACCORDANCE WITH THE PROVISIONS OF SECTION 46 OF THE BOARD'S RULES OF PROCEDURE, THE BOARD IS OF OPINION THAT THE APPLICANTS HAVE FAILED TO MAKE A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND THIS APPLICATION IS THEREFORE DISMISSED.

16163-69-R: A GROUP OF EMPLOYEES OF H. GRAY LIMITED (APPLICANTS) V. RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, LOCAL 1002, A.F.L.:C.I.O.:C.L.C. (RESPONDENT).

(RE: H. GRAY LIMITED,
WINDSOR).

BEFORE: J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

DECISION OF THE BOARD: MAY 14, 1969.

1. THE APPLICANTS HAVE APPLIED PURSUANT TO THE PROVISIONS OF SECTION 43 OF THE LABOUR RELATIONS ACT ON MAY 13TH, 1969 FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT WITH RESPECT TO THAT UNIT OF EMPLOYEES OF H. GRAY LIMITED AT WINDSOR REPRESENTED BY THE RESPONDENT UNION.

2. IT WOULD APPEAR THAT THE RESPONDENT UNION WAS A PARTY TO A COLLECTIVE AGREEMENT WITH H. GRAY LIMITED COVERING "ALL EMPLOYEES OF THE COMPANY WHO REGULARLY WORK AT LEAST THREE (3) FULL-TIME OR PART-TIME DAYS PER WEEK, SAVE AND EXCEPT DEPARTMENT MANAGERS, AND ASSISTANT DEPARTMENT MANAGERS, PERSONS ABOVE THE RANK OF DEPARTMENT MANAGER, PRIVATE SECRETARIES, AND CONTINGENT STAFF".

3. IT WOULD FURTHER APPEAR THAT A CONCILIATION OFFICER WAS APPOINTED BY THE MINISTER TO ASSIST THE RESPONDENT AND H. GRAY LIMITED IN THEIR NEGOTIATIONS FOR A RENEWAL OF THE COLLECTIVE AGREEMENT ON APRIL 11TH, 1969. IT FURTHER APPEARS THAT ON MAY 9TH, 1969 THE MINISTER NOTIFIED THE PARTIES THAT HE DID NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD.

4. SECTION 46(2) OF THE ACT PROVIDES THAT AN APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF A TRADE UNION CANNOT BE MADE WHERE A CONCILIATION OFFICER HAS BEEN APPOINTED BY THE MINISTER UNLESS FOLLOWING SUCH APPOINTMENT,

- (A) AT LEAST TWELVE MONTHS HAVE ELAPSED FROM THE DATE OF THE APPOINTMENT OF THE CONCILIATION OFFICER OR A MEDIATOR; OR
- (B) A CONCILIATION BOARD OR A MEDIATOR HAS BEEN APPOINTED AND THIRTY DAYS HAVE ELAPSED AFTER THE REPORT OF THE CONCILIATION BOARD OR THE MEDIATOR HAS BEEN RELEASED BY THE MINISTER TO THE PARTIES; OR
- (C) THIRTY DAYS HAVE ELAPSED AFTER THE MINISTER HAS INFORMED THE PARTIES THAT HE DOES NOT DEEM IT DESIRABLE TO APPOINT A CONCILIATION BOARD,

WHICHEVER IS LATER.

5. IT THEREFORE APPEARS TO THE BOARD FROM THE FACTS SET OUT ABOVE THAT NONE OF THE TIME PERIODS REFERRED TO IN THE PRECEDING PARAGRAPH COULD HAVE ELAPSED PRIOR TO THE DATE THIS APPLICATION WAS MADE.

6. IF THE BOARD IS CORRECT IN ITS ASSUMPTION THAT THE ABOVE ARE THE FACTS OF THIS CASE, IT WOULD FOLLOW, PURSUANT TO THE PROVISIONS OF SECTION 46(2) OF THE ACT, THAT THIS APPLICATION IS UNTIMELY.

7. THE BOARD ACCORDINGLY DIRECTS THE APPLICANTS TO ADVISE THE BOARD IN WRITING ON OR BEFORE THE 22ND DAY OF MAY, 1969 WHETHER IN THEIR OPINION THE BOARD IS IN ERROR IN ASSUMING THAT THE FACTS OF THIS CASE ARE AS SET OUT ABOVE. IF THE APPLICANTS ARE OF OPINION THAT THE BOARD IS IN ERROR THEY WILL INCLUDE IN THEIR ADVICE TO THE BOARD A SUMMARY OF THE FACTS IN SUPPORT OF THEIR OPINION.

8. THIS APPLICATION WILL NOT BE PROCESSED FURTHER PENDING THE RECEIPT OF SUCH ADVICE AND SUMMARY OF FACTS FROM THE APPLICANTS.

9. IF THE BOARD DOES NOT RECEIVE SUCH ADVICE SUPPORTED BY A SUMMARY OF FACTS AS HEREIN DIRECTED, THIS APPLICATION WILL BE DISPOSED OF PURSUANT TO THE PROVISIONS OF SECTION 46 OF THE BOARD'S RULES OF PROCEDURE WITHOUT FURTHER NOTICE TO THE APPLICANTS.

DECISION OF THE BOARD: MAY 26, 1969.

1. IN ITS DECISION DATED MAY 14TH, 1969 IN THIS MATTER, THE BOARD DIRECTED THAT THE APPLICANTS ADVISE THE BOARD IN WRITING ON OR BEFORE MAY 22ND, 1969 WHETHER IN THEIR OPINION THE BOARD WAS IN ERROR IN ASSUMING THAT THE FACTS OF THIS CASE ARE AS SET OUT IN THE BOARD'S DECISION OF MAY 14TH, 1969.

2. SINCE THE BOARD HAS NOT RECEIVED ANY COMMUNICATION FROM THE APPLICANTS AS DIRECTED, THE BOARD IS SATISFIED THAT PURSUANT TO THE PROVISIONS OF SECTION 46(2) OF THE LABOUR RELATIONS ACT THAT THIS APPLICATION IS UNTIMELY.

3. IN VIEW OF THESE CIRCUMSTANCES AND IN ACCORDANCE WITH THE PROVISIONS OF SECTION 46 OF THE BOARD'S RULES OF PROCEDURE, THE BOARD IS OF OPINION THAT THE APPLICANTS HAVE FAILED TO MAKE A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND THIS APPLICATION IS THEREFORE DISMISSED.

INDEXED ENDORSEMENT-STRIKE UNLAWFUL

16097-69-U: WINDSOR CONSTRUCTION ASSOCIATION (APPLICANT) v. LOCAL UNION 773 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
ESSEX COUNTY, UNIT #1 (RESPONDENT).

BEFORE: H.D. BROWN VICE-CHAIRMAN AND BOARD MEMBERS
E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: LEON Z. MCPHERSON Q.C., NORANDO MECONI Q.C. FOR THE APPLICANT; R. KOSKIE, J. MCINNIS, D. BUTT FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 5, 1969.

1. THIS IS AN APPLICATION FOR A DECLARATION THAT A STRIKE WAS UNLAWFUL.

2. THE RESPONDENT AT THE HEARING MADE A PRELIMINARY OBJECTION TO THIS APPLICATION ON THE BASIS OF THE FACTS OF THIS APPLICATION, THE APPLICANT WAS NOT THE EMPLOYER OF THE EMPLOYEES CONCERNED AND THE PARTIES OF THIS APPLICATION ARE NOT PARTIES TO A COLLECTIVE AGREEMENT. HENCE THE APPLICANT LACKS STATUS TO BRING THIS APPLICATION.

3. FILED WITH THE BOARD WAS A COLLECTIVE AGREEMENT MADE BETWEEN "THE ELECTRICAL CONTRACTORS SECTION OF THE WINDSOR CONSTRUCTION ASSOCIATION AND ALL OTHER SIGNATORS TO THIS AGREEMENT." AND "LOCAL UNION 773 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, ESSEX COUNTY, UNIT #ONE." THIS AGREEMENT WAS SIGNED BY PERSONS ON BEHALF OF THE UNION AND BY TWO PERSONS "FOR THE CONTRACTOR". NO ONE PURPORTS THEREON TO SIGN FOR THE WINDSOR CONSTRUCTION ASSOCIATION AS SUCH. THE AGREEMENT EXPIRED ON APRIL 30TH 1969 AND PRIOR TO THAT DATE A CONCILIATION OFFICER HAD BEEN APPOINTED. THE PROJECT CONCERNED IN THIS MATTER INVOLVED THE CONSTRUCTION OF A SEPARATE SCHOOL BOARD ADMINISTRATION BUILDING AT WINDSOR AND IT APPEARED FROM THE EVIDENCE THAT THE EMPLOYEES INVOLVED IN THIS APPLICATION WERE AT THE MATERIAL TIMES EMPLOYEES OF CANADIAN INTERNATIONAL COMSTOCK COMPANY LIMITED. THIS COMPANY IS NOT A PARTY TO THESE PROCEEDINGS NOR DID IT GIVE ITS CONSENT TO THE INSTITUTION OF THESE PROCEEDINGS, HOWEVER, IT WAS A MEMBER OF THE ELECTRICAL CONTRACTORS SECTION OF THE WINDSOR CONSTRUCTION ASSOCIATION WHEN THIS COLLECTIVE AGREEMENT WAS ENTERED INTO.

4. IT IS NOT NECESSARY IN THE RESULT OF THIS MATTER TO DEAL HERE IN DETAIL WITH ALL THE EVIDENCE PRESENTED TO THE BOARD IN THIS MATTER. THE BOARD HAS CONSISTENTLY INTERPRETED SECTION 67 OF THE LABOUR RELATIONS ACT TO MEAN THAT AN APPLICATION MADE PURSUANT TO THAT SECTION MUST BE MADE BY THE EMPLOYER OF THE EMPLOYEES ALLEGED TO BE ON STRIKE. WHATEVER MAY BE THE INTERNAL ORGANIZATION OF THE APPLICANT, THIS APPLICATION PLAINLY IS NOT BROUGHT BY THE EMPLOYER WHICH IS THE PARTY TO THE COLLECTIVE AGREEMENT REFERRED TO ABOVE AND IT IS ADMITTED THAT THE EMPLOYEES ALLEGED TO BE ON STRIKE ARE NOT EMPLOYEES OF THE APPLICANT.

5. IN THESE CIRCUMSTANCES HAVING REGARD TO THE EVIDENCE BEFORE US WE ARE SATISFIED THAT THE APPLICANT IS NOT THE EMPLOYER OR EMPLOYER'S ORGANIZATION CONCERNED WITHIN THE MEANING OF SECTION 67 OF THE ACT AND IS NOT ENTITLED TO THE RELIEF REQUESTED.

6. THE APPLICATION IS ACCORDINGLY DISMISSED.

INDEXED ENDORSEMENT - PROSECUTION

15989-69-U: STRAND MILLWORK LIMITED AND CENTENNIAL LONDON CABINETS LIMITED (APPLICANTS) v. WESTERN ONTARIO DISTRICT COUNCIL 1682 NORMAN RD. WINDSOR, ONTARIO J.A. PIRIE, 109 CAMBRIA RD GODERICH AND T.G. HARKNESS 36 GOWER PLACE, LONDON, ONT. (RESPONDENTS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: W.G. PHELPS AND J.W. TIEFENBACK FOR THE APPLICANTS; T.E. ARMSTRONG, T.G. HARKNESS AND J.A. PIRIE FOR THE RESPONDENTS.

DECISION OF THE BOARD: MAY 13, 1969.

• • •

2. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION OF THE RESPONDENTS FOR AN OFFENCE UNDER THE LABOUR RELATIONS ACT.

3. THE FOLLOWING IS THE OFFENCE ALLEGED TO HAVE BEEN COMMITTED BY THE RESPONDENTS. THE RESPONDENTS DID SEEK BY COERCION TO COMPEL PERSONS TO BECOME MEMBERS OF A TRADE UNION CONTRARY TO SECTION 52 OF THE LABOUR RELATIONS ACT, R.S.O. 1960, c. 202, AS AMENDED.

4. THE APPLICANTS ARE ASSOCIATED COMPANIES. STRAND MILLWORK LIMITED (HEREINAFTER CALLED STRAND), DO ON-SITE CARPENTRY INSTALLATION WORK OVER A WIDE AREA OF THE PROVINCE OF ONTARIO. IT HAS COLLECTIVE AGREEMENTS WITH THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (HEREINAFTER CALLED THE UNION), COVERING A NUMBER OF AREAS. CENTENNIAL LONDON CABINETS LIMITED (HEREINAFTER CALLED CENTENNIAL) IS A MANUFACTURING CONCERN. IT PRODUCES MILLWORK ITEMS AT A PLANT OUTSIDE LONDON, ONTARIO. ITS EMPLOYEES ARE NOT REPRESENTED BY A UNION. CARL STRAND IS PRESIDENT OF BOTH COMPANIES.

5. IN A LETTER DATED THE 24TH OF FEBRUARY, 1969 THE RESPONDENTS REQUESTED A MEETING WITH THE APPLICANTS WITH A VIEW TO CONCLUDING A COLLECTIVE AGREEMENT COVERING, AMONG OTHER AREAS, THE COUNTY OF GREY.

6. THE APPLICANT, STRAND MILLWORK LIMITED, IN A LETTER DATED FEBRUARY 28, 1969, REQUESTED THE RESPONDENTS TO SUBMIT TO IT THE AGREEMENTS FOR GREY COUNTY FOR SIGNATURE AND RETURN. THE LETTER ALSO DEALS WITH OTHER MATTERS NOT HER RELEVANT.

7. A MEETING WAS ARRANGED FOR MARCH 7TH, 1969. AT THE MEETING, THE RESPONDENTS PRESENTED STRAND WITH A LIST OF ADDITIONAL ITEMS WHICH IT WANTED INCORPORATED INTO AGREEMENT ALREADY SIGNED BY THE RESPONDENTS WITH OTHER EMPLOYEES IN GREY COUNTY. THE

AGREEMENT WOULD THEREFORE, NOT BE THE ONE WHICH STRAND HAD INDICATED IT WAS WILLING TO SIGN. STRAND STATED THAT HE WOULD NOT SIGN THE PROPOSED AGREEMENT BECAUSE IT WAS "MUCH OVER THE EXISTING AGREEMENT".

8. THE EVIDENCE IS THAT AT THIS POINT IN THE MEETING, UNION REPRESENTATIVE HARKNESS MADE REFERENCE TO CENTENNIAL AND ASKED STRAND IF HE WOULD NEGOTIATE AN AGREEMENT WITH THE RESPONDENTS COVERING EMPLOYEES OF THAT COMPANY. STRAND'S EVIDENCE IS THAT HE EXPRESSED A WILLINGNESS TO SIGN SUCH AN AGREEMENT PROVIDED THE RESPONDENTS COULD SHOW THAT THEY REPRESENTED THE MAJORITY OF CENTENNIAL EMPLOYEES.

9. STRAND STATED THAT THE AGREEMENT WHICH THE RESPONDENTS WANTED HIM TO SIGN WITH RESPECT TO CENTENNIAL WAS TO BE THE SAME AS THAT COVERING TREND MILLWORK IN WINDSOR. HE SAID THAT HARKNESS TOLD HIM THAT IF HE SIGNED THE AGREEMENT WITH RESPECT TO CENTENNIAL, THE RESPONDENTS WOULD SIGN THE EXISTING UNAMENDED AGREEMENT WITH RESPECT TO STRAND EMPLOYEES IN GREY COUNTY. THE TREND AGREEMENT WAS NOT PRODUCED AT THIS TIME, NOR WERE ANY OF ITS TERMS DISCUSSED.

10. A FURTHER MEETING TOOK PLACE ON MARCH 24TH, 1969. THIS, ACCORDING TO STRAND'S EVIDENCE, ENDED IN A STALEMATE. HE WAS WILLING TO SIGN THE EXISTING AGREEMENT FOR GREY COUNTY, BUT THE UNION CONTINUED TO INSIST THAT HE FIRST OF ALL SIGN THE AGREEMENT COVERING CENTENNIAL.

11. IT WAS STRAND'S UNDERSTANDING THAT THE TREND AGREEMENT CONTAINED A COMPULSORY UNION MEMBERSHIP CLAUSE. THERE WAS, HOWEVER, NEITHER DISCUSSION OF THE UNION SECURITY CLAUSES OF THAT AGREEMENT AT EITHER THE MARCH 7TH OR MARCH 24TH MEETING, NOR WAS THE AGREEMENT ITSELF PRODUCED AT EITHER MEETING.

12. JOHN TIEFENBÄCK, AN INDUSTRIAL RELATIONS COUNSELLOR TO THE LONDON AND DISTRICT CONSTRUCTION ASSOCIATION, ATTENDED THE MEETING ON MARCH 24TH. HE STATED THAT HE WAS FAMILIAR WITH THE GREY COUNTY AGREEMENTS. HE SAID THEY BOUND THE COMPANIES AND UNIONS CONCERNED SO THAT ALL ON-SITE CONTRACTORS WERE REQUIRED TO SIGN SIMILAR AGREEMENTS SO THAT IT WAS NECESSARY FOR STRAND TO HAVE AN AGREEMENT WITH THE RESPONDENTS COVERING GREY COUNTY.

13. TIEFENBACK SAID THE DISCUSSIONS OF MARCH 24TH CENTRED AROUND CENTENNIAL SITUATION. HE SAID THE RESPONDENTS MADE IT CLEAR THAT IT WOULD NOT SIGN THE GREY COUNTY AGREEMENT UNLESS AN AGREEMENT WAS SIGNED COVERING CENTENNIAL. HE SAID THAT THE UNION REPRESENTATIVES AT THE MEETING SAID THEY WERE LOOKING FOR AN AGREEMENT SIMILAR TO THE TREND MILLWORK AGREEMENT. THE UNION UNDERTOOK TO PROVIDE STRAND WITH A COPY OF THIS AGREEMENT AND SOME DAYS AFTER MARCH 24TH, HARKNESS LEFT WITH HIM AT HIS OFFICE AN AGREEMENT, NOT THE TREND MILLWORK AGREEMENT, BUT ONE SAID TO BE SIMILAR TO IT. HE MADE A NOTATION ON THIS DOCUMENT

IDENTIFYING IT AS THE UNION PROPOSAL WITH RESPECT OF CENTENNIAL CABINET. TIEFENBACK SAID THAT THERE WAS NO DISCUSSION OF UNION SECURITY CLAUSES IN THE MARCH 24TH MEETING.

14. THE BASIS FOR THE REQUEST FOR CONSENT TO PROSECUTE RESTS, AS WE UNDERSTAND IT, ON THE APPLICANTS' BELIEF THAT THE UNION REFUSED TO SIGN A COLLECTIVE AGREEMENT WITH STRAND UNLESS AND UNTIL CENTENNIAL SIGNED AN AGREEMENT WITH THE RESPONDENTS WHICH THE APPLICANT UNDERSTOOD WOULD CONTAIN A COMPULSORY MEMBERSHIP CLAUSE. THE CONTENTION IS THAT THAT BEING SO, THE UNION WAS SEEKING BY COERCION TO COMPEL PERSONS (THAT IS, THE EMPLOYEES OF CENTENNIAL) TO BECOME MEMBERS OF A TRADE UNION CONTRARY TO THE ACT.

15. IT APPEARS TO US UPON THE EVIDENCE THAT ON MARCH 24TH, WHICH IS THE LAST DATE REFERRED TO IN THE PARTICULARS, THE APPLICANT HAD NOT BEEN SQUARELY FACED WITH A DEMAND TO SIGN AN ACTUAL AGREEMENT CONTAINING A COMPULSORY MEMBERSHIP CLAUSE. IT UNDERSTOOD, THE EVIDENCE IS, THAT THE TREND MILLWORK AGREEMENT CONTAINED SUCH A CLAUSE. BUT THE EVIDENCE ALSO IS THAT AS OF MARCH 24TH, THERE HAD BEEN NO BARGAINING AS TO WHAT TYPE OF UNION SECURITY WAS TO BE INCORPORATED INTO THE CENTENNIAL AGREEMENT.

16. THERE WAS, AT THE MOST, AN ASSUMPTION ON THE PART OF THE APPLICANTS THAT A COMPULSORY MEMBERSHIP CLAUSE EXISTED IN THE TREND AGREEMENT, AND A FURTHER ASSUMPTION THAT THE UNION WOULD INSIST ON SUCH A CLAUSE IN THE CENTENNIAL AGREEMENT. ASSUMING FOR THE MOMENT THE DRAFT AGREEMENT, WHICH WAS DELIVERED TIEFENBACK AFTER MARCH 24TH, TO BE ADMISSABLE AND RELEVANT, IT WAS RECEIVED ONLY AS A "PROPOSAL" WITH RESPECT TO CENTENNIAL. IT IS TRUE IT CONTAINS A CLAUSE CALLING FOR UNION MEMBERSHIP OF ALL EMPLOYEES WITHIN 30 DAYS OF HIRING OR THE DATE OF THE AGREEMENT, BUT, AGAIN, THERE IS NO EVIDENCE THAT BARGAINING TOOK PLACE WITH RESPECT TO THE DRAFT AGREEMENT AS A WHOLE OR THE CLAUSE IN PARTICULAR. IN ANY EVENT, SUCH A CLAUSE IS PERMISSIBLE UNDER THE ACT SUBJECT TO THE PROVISIONS OF SECTION 35(4) NOTWITHSTANDING THE COMPULSORY ASPECT AND IS THEREFORE NOT, PER SE, OBJECTIONABLE.

17. BE THAT AS IT MAY, WE ARE OF THE OPINION THAT WHAT TOOK PLACE BETWEEN THE APPLICANTS AND THE RESPONDENTS IS, IN ANY EVENT, TOO REMOTE FROM ANY OF THE EMPLOYEES WHO MAY HAVE BEEN CONCERNED TO RAISE ANY QUESTION OF THEIR INTIMIDATION OR COERCION BY THE RESPONDENTS WITHIN THE MEANING OF AND CONTRARY TO SECTION 52 OF THE ACT.

18. HAVING REGARD TO ALL OF THE FOREGOING THE BOARD, IN THE EXERCISE OF ITS DISCRETION, DENIES THE APPLICANT'S REQUEST FOR CONSENT TO PROSECUTE AND THE APPLICATION IS HEREBY DISMISSED.

INDEXED ENDORSEMENTS - SECTION 65

15389-68-U: TEXTILE WORKERS UNION OF AMERICA, AFL, CIO-CLC (COMPLAINANT) v. KAYSER ROTH OF CANADA LIMITED (RESPONDENT).

BEFORE: H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS D.B. ARCHER AND F.W. MURRAY.

APPEARANCES AT THE HEARING: T.E. ARMSTRONG, CHAS. CLARK, M. DAVIDSON FOR THE APPLICANT; D. CHURCHILL-SMITH, PAUL BEHRKE FOR THE RESPONDENT.

DECISION OF H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER
D. ARCHER: MAY 29, 1969.

1. THIS IS AN APPLICATION FOR RELIEF MADE PURSUANT TO THE PROVISIONS OF SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSON, MRS. ZULMIRA DE SILVA, WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTIONS 50 AND 52 OF THE LABOUR RELATIONS ACT AND REQUESTS THAT SHE BE RE-INSTATED IN HER FORMER EMPLOYMENT WITH FULL COMPENSATION.

2. THE AGGRIEVED PERSON TESTIFIED THAT SHE WAS EMPLOYED BY THE RESPONDENT, CONTINUOUSLY FROM NOVEMBER 7TH 1966 TO THE DATE OF HER DISCHARGE, NOVEMBER 8TH 1968, AS A SEWING MACHINE OPERATOR AT THE RESPONDENT'S Highbury Avenue plant at London. THERE WERE ABOUT THIRTY EMPLOYEES IN HER DEPARTMENT AND HER SUPERVISOR WAS MRS. MARIA PETRIE. SHE JOINED THE UNION ON THE 21ST OF OCTOBER AND AT THAT TIME MET MR. MONTY DAVIDSON, A UNION REPRESENTATIVE, AT HER SISTER-IN-LAW, MRS. RODRIGUEZ'S HOUSE. HE GAVE HER A CARD TO SIGN AND SOME OTHERS AS WELL AND ASKED HER TO SEE IF SHE COULD GET OTHER EMPLOYEES TO SIGN. SHE THEN ASSISTED HIM IN TRANSLATING A PAMPHLET INTO PORTUGUESE FOR USE IN THE ORGANIZING CAMPAIGN. MR. DAVIDSON TESTIFIED THAT THE CAMPAIGN STARTED ON THE 10TH OR 11TH OF OCTOBER WHEN LEAFLETS WERE DISTRIBUTED TO EMPLOYEES AT THE GATE. HE SAID HE ATTENDED AT MRS. RODRIGUEZ'S HOUSE AT HER INVITATION ON OCTOBER 24TH AND THERE MET THE AGGRIEVED PERSON WHO ASSISTED HIM IN THE TRANSLATION OF A LEAFLET WHICH WAS DISTRIBUTED IN PORTUGUESE AT THE END OF THAT WEEK. HE ALSO ASKED MRS. DE SILVA TO OBTAIN FOR HIM NAMES AND ADDRESSES OF EMPLOYEES WHICH SHE AGREED TO DO, AND HE LEFT ADDITIONAL MEMBERSHIP CARDS WITH HER. SHE RETURNED ONLY HER CARD TO HIM BUT DID GIVE HIM NAMES AND ADDRESSES OF THIRTEEN EMPLOYEES. MRS. DE SILVA SAID THAT SHE ASKED OTHER PORTUGUESE EMPLOYEES AT WORK IF THEY WANTED TO SIGN,

AND SHE SAID THEY WERE ALL TALKING ABOUT THE UNION AT LUNCH AND DURING BREAKS, EVERY DAY.

3. ON THURSDAY, NOVEMBER 7TH, SHE WAS WORKING ON "BEGINNINGS" AT WHICH JOB SHE SAID, NO ONE MAKES MONEY, AND HER SUPERVISOR WAS PLEASED WITH HER OUTPUT AND ASKED HER TO WORK OVERTIME. MRS. DE SILVA WAS A PIECE WORKER. AFTER LUNCH THAT DAY SHE NOTICED ORANNA CATUNTO AT HER MACHINE, CRYING, AND ON QUESTIONING HER THE REASON FOR IT, WAS TOLD THAT SHE HAD BEEN ADVISED BY A MR. HARPER THAT SHE WAS INVOLVED WITH THE UNION AND WAS WARNED IF SHE DID ANYTHING INSIDE THE PLANT SHE WOULD BE DISMISSED. MRS. DE SILVA HAD NOT ASKED HER TO JOIN AS SHE WORKED IN A DIFFERENT DEPARTMENT, BUT OTHERS HAD DONE SO. THE NEXT DAY AFTER LUNCH, SHE ASKED MRS. ALFONSO WHY OTHER EMPLOYEES DID NOT WANT TO SIGN AND ASKED HER TO SIGNBUT SHE REFUSED AND SAID THE OTHERS WERE CONCERNED ABOUT ORANNA CATUNTO AND DID NOT WANT TO GET INVOLVED. THIS CONVERSATION TOOK PLACE AFTER LUNCH AT MRS. ALFONSO'S MACHINE, AND ON THE OTHER SIDE ABOUT SIX FEET AWAY WAS ORANNA CATUNTO AND A FORELADY. SHE ADMITTED THAT THEY WERE THEN TALKING IN PORTUGUESE AND SAID THE FORELADY MAY HAVE GUESSED WHAT THEY WERE TALKING ABOUT. WHEN MRS. ALFONSO REFUSED, MRS. DE SILVA WENT TO HER MACHINE. LATER THAT AFTERNOON, MRS. MARIE PETRIE TOLD HER TO GET HER COAT AND PURSE AND ATTEND AT MR. WINTERS' OFFICE. PRESENT AT THAT MEETING WERE, MR. WINTERS, PERSONNEL MANAGER, MRS. CURRY, SUPERVISOR, MRS. PETRIE AND MR. HEYERMAN, PRODUCTION MANAGER AND THE AGGRIEVED PERSON. SHE SAID SHE WAS TOLD THAT SHE WAS A GOOD WORKER BUT COULD NOT MAKE ENOUGH MONEY, AND AS THE RATE WAS TO INCREASE ON JANUARY 1ST, SHE WOULD NOT DO ENOUGH WORK TO JUSTIFY THE RAISE, AND THEREFORE HAD TO BE LET GO. THEN MRS. DE SILVA ASKED MR. WINTERS IF HE COULD DO THIS, TO WHICH HE REPLIED IF SHE DIDN'T BELIEVE HIM HE WOULD TELEPHONE THE LABOUR DEPARTMENT.

4. MRS. DE SILVA CLAIMED THAT THE REASON SHE COULD NOT MAKE ENOUGH MONEY WAS THAT SHE WAS CHANGED TO DIFFERENT MACHINES EVERY DAY AND SHE HAD TOLD MRS. CURRY THAT SHE WANTED TO MAKE MORE MONEY, AND IF THEY KEPT ON CHANGING HER THEY WOULD HAVE TO PAY HER MORE. SHE DID NOT KNOW WHY SHE HAD BEEN CHANGED SO OFTEN BUT SHE HAD NOT REFUSED TO WORK ON DIFFERENT MACHINES. FOR THE TWO YEARS OF HER EMPLOYMENT SHE ALWAYS WORKED ON THE SAME TYPE OF GARMENT AND THE SAME TYPE OF OPERATION. SHE SAID SHE HAD NEVER BEEN CRITICIZED IN HER WORK, NOR ANYTHING SAID TO HER ABOUT HER EMPLOYMENT PRIOR TO THE DATE OF HER DISCHARGE. ON THAT DATE, BEFORE LUNCH, SHE HAD RECEIVED HER WORK ASSIGNMENT FOR THE FOLLOWING DAY, SATURDAY, FROM MRS. PETRIE WHO ALSO ASKED HER TO COME TO WORK EVERY SATURDAY BEFORE CHRISTMAS AND FOR TWO WEEKS AFTER.

5. Mrs. ORANNA CATUNTO TESTIFIED THAT SHE HAD HEARD FROM OTHER EMPLOYEES ABOUT THE UNION TWO WEEKS PRIOR TO THE DATE MRS. DE SILVA WAS DISCHARGED, AND AT THAT TIME WAS TOLD BY A FRIEND THAT THE UNION WOULD BE COMING IN. ON THURSDAY, NOVEMBER 7TH SHE WAS CALLED TO THE OFFICE OF MR. CARP AND HER SUPERVISOR, STEFFANIE, WAS THERE WITH MR. CARP. SHE WAS TOLD IF SHE WANTED TO TALK ABOUT THE UNION SHE WOULD HAVE TO DO IT AFTER WORKING HOURS AND SHE AGREED AND SAID SHE HAD NOT DONE ANYTHING FOR THE UNION THEN RETURNED TO HER MACHINE. SHE WAS UPSET BECAUSE THEY THOUGHT " I WAS FALSE TO THEM, TALKING ABOUT THE UNION, WHEN I DID NOT." SHE THEN ASKED ANOTHER SUPERVISOR, IF HE KNEW WHO HAD SPREAD THE RUMOUR THAT SHE WAS DOING THIS FOR THE UNION, AND SHE SAID HE LAUGHED AND SAID HE WOULD LET HER KNOW IN SIX MONTHS. HER FORELADY TOLD HER THE NEXT DAY THAT HE ACCEPTED HER STATEMENT AND THEN SHE STOPPED CRYING. OTHER EMPLOYEES HAD ASKED HER WHY SHE WAS CRYING AND SHE HAD TOLD THEM THE STORY AND RECALLED MRS. DE SILVA TELLING HER AFTER LUNCH, SHE SHOULD NOT CRY.

6. THE RESPONDENT'S ANSWER TO THE COMPLAINT IS THAT THE AGGRIEVED PERSON WAS DISCHARGED NOT FOR ACTIVITIES ON BEHALF OF THE UNION BUT BECAUSE OF HER POOR WORK RECORD, HER CONSISTENTLY LOW EARNINGS DURING HER EMPLOYMENT AND HER ATTITUDE TO HER WORK. MR. WINTERS TESTIFIED THAT HE WAS INSTRUCTED BY MR. CARP ON WEDNESDAY THAT MRS. DE SILVA'S EMPLOYMENT WAS TO BE TERMINATED ON FRIDAY. HE SAID THAT THE NORMAL PROCEDURE FOR THE COMPANY IN DISCHARGING EMPLOYEES WAS TO WAIT UNTIL FRIDAY AFTERNOON AND THEN HAVE A MEETING SIMILAR TO THE MEETING WITH MRS. DE SILVA. MR. WINTERS SAID HE HAD BEEN TOLD THAT THE QUALITY WAS BAD, PERFORMANCE UNSATISFACTORY, ATTITUDE BAD, AS SHE HAD THREATENED TO QUIT ON OCCASIONS AND HER EARNINGS HAD BEEN LOW FOR SEVERAL MONTHS. OTHER EMPLOYEES HAD BEEN RELEASED FOR UNSATISFACTORY WORK BETWEEN AUGUST AND NOVEMBER 1968 AND HAD BEEN GIVEN PRIOR VERBAL WARNINGS. HE PRESENTED A COMPARISON OF THE EARNINGS OF NINE EMPLOYEES IN THE SAME DEPARTMENT AS MRS. DE SILVA, ALL OF WHOM DID RELATIVELY THE SAME JOB. MRS. DE SILVA'S HOURLY AVERAGE WAGE SHOWN ON THIS REPORT FROM AUGUST 10TH TO OCTOBER 26TH VARIED BETWEEN 71¢ AND \$1.45. ON THE PAY PERIOD ENDING NOVEMBER 2ND, HER WAGE WAS \$1.53 AND ON NOVEMBER 9TH, \$1.30. THE GUARANTEED PIECE WORK RATE UP TO OCTOBER 12TH WAS \$1.05 AND THIS WAS THEN RAISED TO \$1.20. MRS. DE SILVA'S POSITION IN RELATION TO THE OTHER NINE EMPLOYEES WAS EIGHTH. MR. WINTERS COULD NOT EXPLAIN WHY HER RATE WAS HIGHER FOR THE LAST TWO WEEKS OF HER EMPLOYMENT AND CLAIMED THAT THIS INFORMATION WAS NOT AVAILABLE TO THEM PRIOR TO HER DISMISSAL. THE TIMES ARE RECORDED DAILY BY AN EMPLOYEE ON "GUM SHEETS" AND TURNED INTO THE PAYROLL DEPARTMENT. HE SAID THE PREVIOUS DAY'S EARNINGS WOULD BE OBTAINED FROM AN EMPLOYEE, IF NECESSARY, BUT NOT THE WHOLE PERIOD; BUT IN ANY EVENT HE HAD NOT CHECKED THIS FOR MRS. DE SILVA PRIOR TO HER DISCHARGE WHICH IS NOT NORMALLY DONE, AS HE DID NOT THINK THAT

IMMEDIATELY PREVIOUS EARNINGS WOULD BE SIGNIFICANT. HE SAID THAT MR. CARP HAD TOLD HIM HER QUALITY WAS POOR BUT ADMITTED THAT THERE WAS NO INDICATION OF THE QUALITY WORSENING. HE DID NOT GO INTO ANY DETAILS WITH MR. CARP ABOUT IT AS MR. CARP TOLD HIM THAT HE HAD DISCUSSED IT WITH MRS. CURRY. MR. CARP DIRECTED HIM TO FIRE HER. WINTER HAD NOT DISCUSSED THE PROBLEMS WITH MRS. DE SILVA OR WITH HER SUPERVISOR. HE CALLED THE OTHERS TO HIS OFFICE ON FRIDAY AFTERNOON AT 4:00 P.M. AND HAD NOT PREVIOUSLY DISCUSSED THIS WITH THEM. HE COULD NOT RECALL ANY MENTION BEING MADE OF MORE MONEY TO BE PAID ON JANUARY 1ST. MRS. DE SILVA CHALLENGED HIS RIGHT TO DISCHARGE HER AND HE THEN UNDERTOOK TO CALL THE DEPARTMENT OF LABOUR. WINTERS SAID HE WAS AWARE OF THE UNION'S ORGANIZING CAMPAIGN IN OCTOBER WHEN HE SAW THEIR LEAFLET, BUT WAS NOT AWARE OF THE ISSUE OF SIGNING CARDS IN THE PLANT AND HAD NOTHING TO DO WITH MRS. CATUNTO AT THAT TIME.

7. MRS. CURRY, HEAD SUPERVISOR OF THE LINGERIE DIVISION SINCE DECEMBER 1966, TESTIFIED THAT MRS. DESILVA WAS AN OVER-LOCK OPERATOR IN THE PANTY DEPARTMENT. IN THAT POSITION SHE OPERATED ONE MARROW MACHINE WHICH IS A SEWING OPERATION. IN AUGUST, MRS. PETRIE COMPLAINED TO HER OF MRS. DE SILVA'S WORK BECAUSE IT WAS OF BAD QUALITY AND THERE WERE A LOT OF RETURNS FROM THE FINISHING DEPARTMENT FOR REPAIRS. MRS. DE SILVA WAS NOT MAKING THE PIECE RATE AND A MAIN COMPLAINT WITH HER WORK WAS THAT SHE WAS MIXING BUNDLES OF GARMENTS WHICH MIXED THE SIZES. SHE SAID SHE TALKED TO MRS. DE SILVA AT THAT TIME AND TOLD HER SHE WOULD HAVE TO MAKE UP HER PRODUCTION AND NOT OPEN UP MORE THAN ONE BUNDLE AT A TIME, AND IF SHE CONTINUED TO DO SO SHE WOULD HAVE TO BE RELEASED. MRS. CURRY SAID SHE DID NOT HAVE ANY MORE PROBLEMS WITH THE BUNDLES BUT HER QUALITY AND SPEED DID NOT IMPROVE. IN SEPTEMBER, MRS. DE SILVA TOLD MRS. CURRY THAT IF SHE DID NOT GET MORE MONEY SHE WOULD QUIT AND SHE ASKED MRS. PETRIE TO BE MOVED TO OTHER WORK. THIS HAPPENED, SHE THOUGHT, ABOUT THE MIDDLE OF SEPTEMBER. MRS. DE SILVA STAYED AT THE JOB FOR TWO WEEKS AND THEN REQUESTED TO COME OFF IT. AT THAT TIME HER SPEED WAS NOT MUCH BETTER, BUT SHE DID NOT HAVE AS MANY REPAIRS AS BEFORE. MRS. CURRY THEN RECOMMENDED TO MR. CARP THAT SHE BE DISCHARGED AS SHE WAS NOT IMPROVING. MR. CARP DID NOT ACCEPT THIS RECOMMENDATION AND ASKED MRS. CURRY TO TRY TO GET HER WORK IMPROVED. AFTER THAT MRS. CURRY SAID THAT SHE WORKED WITH HER TWO OR THREE TIMES IN ONE WEEK FOR ONE HALF AN HOUR AT A TIME BUT THERE WAS NO IMPROVEMENT. MRS. CURRY HAD A TIME STUDY DONE ON HER TYPE OF WORK BY THE ENGINEERING DEPARTMENT AND, AS A RESULT, SOME JOB TIMES WERE INCREASED IN OCTOBER BUT SHE STILL DID NOT MAKE THE RATES. SHE SAID SHE CONTINUED TO WORK PERIODICALLY WITH HER AND SHE HAD REPAIRS TO ABOUT TWENTY OUT OF TWENTY-FOUR GARMENTS.

THIS, OF COURSE, PULLED DOWN HER RATE. ON NOVEMBER 1ST, MRS. DE SILVA AGAIN SAID TO MRS. CURRY, "THE MONEY IS NO GOOD, I'M QUITTING." THE FOLLOWING MONDAY MRS. CURRY RECOMMENDED TO MR. CARP THAT MRS. DE SILVA BE DISCHARGED AND AGAIN ON TUESDAY MORNING FOLLOWING MORE COMPLAINTS FROM MRS. PETRIE SHE TOOK REPAIR WORK FROM MRS. DE SILVA TO SHOW MR. CARP AND, AS A RESULT, HE TOLD MRS. CURRY TO LET HER GO ON FRIDAY. SHE SAID THAT WAS THE DAY THE DECISION WAS TAKEN TO FIRE MRS. DE SILVA BUT SAID THAT WE, MRS. CURRY AND MRS. PETRIE, DID NOT DISCUSS THIS WITH MRS. DE SILVA.

8. MRS. CURRY SAID THAT ALTHOUGH SHE WAS AWARE THAT THE UNION WAS ATTEMPTING TO ORGANIZE AT THAT TIME SHE DID NOT KNOW THAT MRS. DE SILVA WAS ACTIVE IN THE UNION UNTIL AFTER THIS COMPLAINT WAS LODGED. MRS. CURRY SAID THAT IN 1967 SHE HAD TOLD MRS. DE SILVA THAT HER QUALITY WAS BAD AND THEREAFTER, ALTHOUGH SHE WAS A SKILLED OPERATOR AND EXPERIENCED, HER WORK PERFORMANCE WAS IRREGULAR. MRS. CURRY MAINTAINED THAT MRS. DE SILVA DID NOT WORK ON A ZIG-ZAG MACHINE OR A STRAIGHT SEWING MACHINE AND DID NOT THINK SHE OPERATED A TACKING MACHINE, AND STATED THAT SHE WAS NOT CHANGED FROM MACHINE TO MACHINE. MRS. CURRY SAID THAT SHE IS RESPONSIBLE FOR HER ASSIGNMENTS EXCEPT IF SHE WAS NOT AT THE PLANT, THEN MRS. PETRIE WOULD MAKE THE ASSIGNMENTS. PRIOR TO AUGUST, THERE WERE COMPLAINTS FROM TIME TO TIME ABOUT MRS. DE SILVA'S WORK FROM MRS. PETRIE. MR. HEYER-MAN TOLD MRS. CURRY TO GO TO THE MEETING ON FRIDAY AT MR. WINTER'S OFFICE. SHE SAID THAT WINTER TOLD MRS. DE SILVA THAT SHE WAS LET GO FOR UNSATISFACTORY PERFORMANCE AND POOR QUALITY BUT THERE WAS NO MENTION OF AN INCREASE IN JANUARY. MRS. CURRY SAID SHE DID NOT KNOW THAT MRS. DE SILVA HAD MADE AN IMPROVEMENT IN HER RECORD IN THE TWO WEEKS PRIOR TO THAT DATE, BUT COULD NOT SAY WHETHER MRS. PETRIE KNEW OF THIS OR NOT. MRS. CURRY STATED THAT MRS. DE SILVA WAS NOT ASKED TO WORK OVERTIME ON NOVEMBER 8TH AS THERE WAS NO REASON FOR DOING IT, BUT THEN ADMITTED SHE WOULD NOT REALLY KNOW IF SHE WAS ASKED TO DO SO OR NOT, BUT DID NOT TELL MRS. PETRIE TO ASK HER TO WORK OVERTIME AND ANY OVERTIME WOULD BE DONE ONLY ON HER AUTHORITY. MRS. CURRY COULD NOT EXPLAIN MRS. DE SILVA'S DETERIORATION BUT HER WORK WAS NOT GOOD AT THE START AND FAILED TO IMPROVE AND SHE HAD AN UNACCEPTABLE LEVEL OF PERFORMANCE.

9. MRS. DENELIA AMARO, EMPLOYED BY THE RESPONDENT AS A SEWING MACHINE OPERATOR, TESTIFIED THAT MRS. DE SILVA WAS IN THE SAME DEPARTMENT AS SHE WAS AND SAW HER WORKING ON DIFFERENT MACHINES INCLUDING THE TACKING MACHINE, PLAIN SEW, ZIG-ZAG AND MARROW MACHINE. SHE SAID SHE THOUGHT MRS. DE SILVA WAS MOVED QUITE OFTEN. SHE WAS, HOWEVER, NOT AT THE PLANT FROM AUGUST TO NOVEMBER 1968. SHE THOUGHT THAT IN JUNE 1968, MRS. DE SILVA HAD ASKED HER TO SPEAK TO A FLOORLADY TO SEE IF SHE COULD GET ON ONE MACHINE OR GET A RAISE AS SHE WAS NOT MAKING AS MUCH MONEY AS OTHERS.

10. IN REPLY, MRS. DE SILVA STATED THAT SHE WAS NOT CRITICIZED FOR HER WORK BY MRS. CURRY; SHE WAS NEVER TOLD SHE WAS SLOW OR THAT THERE WAS ANYTHING ELSE WRONG, NOR DID SHE HAVE ANY PROBLEMS WITH MIXING BUNDLES OR DISCUSSIONS ABOUT IT. SHE THEN SAID THE BUNDLES WERE MIXED BEFORE SHE RECEIVED THEM AT HER MACHINE AND SHE TOLD THIS TO MRS. PETRIE AT THE TIME. THAT WAS ALL THAT WAS SAID AT ANY TIME ABOUT MIXING BUNDLES. SHE WAS NOT TOLD THAT SHE WOULD BE LET GO IF IT EVER HAPPENED AGAIN. SHE FURTHER STATED THAT MRS. CURRY HAD NOT WORKED WITH HER IN THE FALL OF 1968 AND SHE HAD ONLY TALKED TO MRS. PETRIE DURING THIS TIME. MRS. CURRY HAD TOLD HER IN MARCH THE BEST WAY OF DOING A CERTAIN JOB BUT SHE NEVER RECEIVED ANY OTHER INSTRUCTION FROM HER. FROM AUGUST TO NOVEMBER SHE WORKED ON ZIG-ZAG MACHINES, MARROW MACHINES AND ONE COTTON ELASTIC MACHINE TO WHICH SHE WAS ASSIGNED BY MRS. PETRIE WHO TOLD HER TO CHANGE JOBS BECAUSE MRS. CURRY HAD TOLD HER TO DO SO. SHE CHANGED JOBS IN SOME WEEKS, THREE OR FOUR TIMES A DAY. ABOUT TWO MONTHS PRIOR TO HER DISCHARGE SHE SAID SHE SPOKE TO SOMEONE TO SPEAK TO MRS. CURRY TO SEE IF SHE COULD GET A RAISE OR STAY ON ONE MACHINE. SHE SAID SHE TOLD MRS. PETRIE THAT THE REASON FOR HER LOW RATE WAS THAT SHE WAS CHANGED TOO MUCH FROM MACHINE TO MACHINE. ON NOVEMBER 8TH SHE SAID THAT SHE HAD NOT HAD ANY WORK RETURNED TO HER THAT DAY AND THERE WAS NOT A BACK-LOG OF WORK AS SHE WAS THE ONLY ONE DOING THE PARTICULAR JOB AT THAT TIME, BUT ABOUT TEN GARMENTS WERE LEFT FOR ANOTHER GIRL TO FINISH ON THE ZIG-ZAG MACHINE. WITH RESPECT TO HER DISCHARGE SHE SAID THAT THE ONLY REASON GIVEN TO HER AT THAT TIME WAS THAT SHE COULD NOT MAKE ENOUGH MONEY AND NOTHING WAS SAID ABOUT HER ATTITUDE.

11. THERE ARE CONSIDERABLE AND IMPORTANT CONFLICTS IN THE TESTIMONY OF THE AGGRIEVED PERSON AND THE WITNESSES FOR THE RESPONDENT, AND THEREFORE THE BOARD IN DETERMINING THE ISSUES MUST CONSIDER THE CREDIBILITY OF THE WITNESSES WHICH IS RARELY AN EASY TASK. THE BOARD OF COURSE, MUST IN THE FIRST INSTANCE ASSESS THE AGGRIEVED PERSON'S TESTIMONY AND AGAINST THIS, IN THIS CASE, CHIEFLY THE EVIDENCE OF MRS. CURRY. IN OUR VIEW BOTH WITNESSES APPEARED TO GIVE A STRAIGHTFORWARD ACCOUNT OF THE INCIDENT FROM THEIR RESPECTIVE POSITIONS AND THERE WAS LITTLE TO CHOOSE IN THE MANNER IN WHICH THEY EACH TESTIFIED. THE CONFLICT THEN, FOR OUR PURPOSES, MUST BE RESOLVED BY EXAMINING THE CONTENT OF THE EVIDENCE BEFORE US TO DETERMINE WHETHER THE COMPLAINANT HAS MET THE QONUS ON IT AND IF SO, WHETHER THE RESPONDENT HAS SATISFIED THE BOARD THAT IN ITS ACTIONS TAKEN AGAINST THE AGGRIEVED PERSON IT DID NOT CONTRAVENE THE LABOUR RELATIONS ACT, IN THE MANNER ALLEGED.

12. SOME OF THE FACTS NOT CONTRADICTED ARE THAT MRS. DE SILVA WAS DISCHARGED BY THE RESPONDENT ON NOVEMBER 8TH 1968 HAVING BEEN EMPLOYED BY IT FOR TWO YEARS AS A SEWING MACHINE OPERATOR. THE COMPLAINANT'S ORGANIZING CAMPAIGN HAD COMMENCED IN OCTOBER OF WHICH THE RESPONDENT WAS WELL AWARE. MRS. DE SILVA HAD TAKEN AN ACTIVE PART IN THE ORGANIZING CAMPAIGN BY OBTAINING NAMES AND ADDRESSES OF EMPLOYEES FOR THE UNION AND OPENLY SOLICITED FOR MEMBERSHIP IN THE PLANT AT LUNCH AND BREAK TIMES AND ALSO HAD TRANSLATED A LEAFLET FROM ENGLISH TO PORTUGUESE. ACCEPTING MRS. DE SILVA'S EVIDENCE, SHE HAD NO SERIOUS DIFFICULTIES IN HER WORK AND WAS NOT CRITICIZED PRIOR TO HER DISCHARGE BUT HAD COMPLAINED TO HER SUPERVISOR THAT SHE COULD NOT MAKE ENOUGH MONEY BECAUSE SHE HAD BEEN CONSTANTLY CHANGED FROM ONE MACHINE TO ANOTHER AND REQUESTED A RAISE OR A JOB ON ONE MACHINE. APPARENTLY, AS A RESULT OF SUCH COMPLAINTS, A TIME STUDY WAS UNDERTAKEN AND CERTAIN CHANGES WERE MADE. IN ANY EVENT MRS. DE SILVA DID NOT MEET THE RATE FOR PIECE WORK DURING THE PERIOD AUGUST 10TH TO OCTOBER 26TH ALTHOUGH THE LAST TWO WEEKS OF THAT PERIOD SHOWED IMPROVEMENT DUE, ACCORDING TO THE RESPONDENT'S EVIDENCE, TO THE CHANGES MADE AFTER THE TIME STUDY. IN THE FOLLOWING TWO WEEKS ENDING NOVEMBER 9TH, HER RATE INCREASED TO CONSIDERABLY MORE THAN THE PIECE WORK RATE. ON THE OTHER HAND MRS. CURRY SAID THAT HER RATE WAS AFFECTED BY CONSIDERABLE REPAIR WORK, SHE HAD THREATENED TO QUIT UNLESS SHE GOT A RAISE AND IN SPITE OF HER EFFORTS TO ASSIST MRS. DE SILVA HER WORK DID NOT IMPROVE BUT DETERIORATED DURING THE FALL OF 1968 AND ALL OF THESE FACTORS CONSTITUTED THE REASON FOR HER DISCHARGE.

13. THE MAIN REASON GIVEN BY THE WITNESSES FOR THE RESPONDENT AND WHICH MRS. DE SILVA SAID SHE WAS TOLD BY WINTERS ON THE DATE OF HER DISCHARGE, WAS THAT SHE DID NOT MAKE ENOUGH MONEY OR TO PUT IT ANOTHER WAY, SHE DID NOT MAKE THE PIECE WORK RATE. IN EXAMINING THIS, IT MUST BE CONSIDERED THAT MRS. DE SILVA HAD WORKED FOR THE RESPONDENT FOR TWO YEARS AND ALTHOUGH EVIDENCE WAS OFFERED THAT OTHER EMPLOYEES WERE DISCHARGED DURING THIS PERIOD FOR UNSATISFACTORY PERFORMANCE SUCH PERSONS HAD BEEN EMPLOYED FOR ONLY A SHORT PERIOD OF TIME AND SOME WERE PROBATIONARY EMPLOYEES. THERE IS NO SUBSTANTIAL EXPLANATION WHY THE RESPONDENT RETAINED MRS. DE SILVA IN HER JOB FOR THIS PERIOD OF TIME WHILE AT THE SAME TIME MAINTAINING THAT HER WORK WAS NOT SATISFACTORY. WE DO NOT ACCEPT THE RESPONDENT'S EVIDENCE THAT HER EARNINGS FOR THE PERIOD IMMEDIATELY PRIOR TO HER DISCHARGE WERE NOT AVAILABLE. WHEN THE RESPONDENT SUBMITS AS ITS MAIN RESPONSE TO THE CLAIM, THAT HER LOW EARNINGS WERE THE REASON FOR HER DISCHARGE, AND AT THE SAME TIME TAKES INTO ACCOUNT ONLY THE FIGURES THAT SUPPORT ITS POSITION TO THE TOTAL DISREGARD OF HER OBVIOUS IMPROVEMENT IMMEDIATELY PRIOR TO HER DISCHARGE, IT LEAVES THE BOARD WITH CONSIDERABLE DOUBT AS TO THE VERACITY OF THE RESPONDENT'S ENTIRE POSITION.

14. THE OTHER REASONS OFFERED BY THE RESPONDENT WERE THE BAD QUALITY OF HER WORK AND HER ATTITUDE. IT IS CLEAR THAT THESE ARE ONLY SUBSIDIARY REASONS TO THE FOREGOING AND EVEN IF WE DID ACCEPT MRS. CURRY'S ENTIRE EVIDENCE THAT THERE WERE CONSIDERABLE REPAIRS THIS HAD BEEN GOING ON FOR SOME TIME AND IT IS APPARENT THAT THE CONSIDERATION HERE WAS TO THEIR EFFECT OF MRS. DE SILVA'S RATE. IN SO FAR AS HER ATTITUDE TO HER WORK, THERE IS ONLY THE EVIDENCE THAT SHE SAID SHE WAS HEARD TO SAY THAT SHE WOULD QUIT AS THE MONEY WAS NO GOOD. MRS. CURRY KNEW FOR SOME TIME THAT SHE WAS NOT SATISFIED AND HER STATEMENT ALTHOUGH PERHAPS INOPPORTUNE WAS ACCURATE, IN THAT SHE DID NOT WORK UP TO THE MINIMUM RATE BUT THERE IS NO QUESTION IN THIS STATEMENT TAKEN BY ITSELF, OF INSUBORDINATION. SHE DID NOT REFUSE TO WORK BUT HAD CONTINUALLY ATTEMPTED TO BE ASSIGNED TO ONE MACHINE WHERE SHE COULD CONCENTRATE ON PERFORMING AT THE PIECE WORK RATE. WE DO NOT ACCEPT MRS. CURRY'S EVIDENCE THAT MRS. DE SILVA WAS ONLY WORKING ON THE MARROW MACHINES. WE BELIEVE THE EVIDENCE IS QUITE CLEAR THAT MRS. DE SILVA WAS IN FACT REGULARLY ASSIGNED FROM ONE MACHINE TO ANOTHER AND IT IS REASONABLE TO CONCLUDE THAT HER PRODUCTION RATE WOULD SUFFER FOR THIS REASON. IT MAY WELL BE THAT MRS. CURRY WAS NOT AWARE OF ALL OF SUCH ASSIGNMENTS AS MRS. PETRIE, THE FORELADY, WAS INVOLVED IN THAT REGARD BUT WE DO NOT HAVE THE BENEFIT OF HER EVIDENCE. ACCORDING TO MRS. CURRY THERE WERE A SERIES OF INCIDENTS DURING THE FALL OF 1968 WHICH, TAKEN TOGETHER WERE THE BASIS FOR HER DECISION TO ASK MR. CARP TO DISCHARGE MRS. DE SILVA. SHE SAID ON THE TUESDAY PRIOR TO MRS. DE SILVA'S DISCHARGE SHE ATTENDED MR. CARP'S OFFICE WITH SOME GARMENTS FROM MRS. DE SILVA WHICH NEEDED REPAIR, WHICH HAD BEEN GIVEN TO HER BY MRS. PETRIE AND THE DECISION TO DISCHARGE MRS. DE SILVA WAS TAKEN THAT DAY. MR. WINTERS TESTIFIED HE WAS INSTRUCTED BY MR. CARP ON WEDNESDAY TO DISCHARGE MRS. DE SILVA. IT IS SIGNIFICANT TO NOTE THAT ON TUESDAY MRS. PETRIE EXPRESSED SURPRISE AT MRS. DE SILVA'S INCREASE OF PRODUCTION AND THEN LATER REQUESTED HER TO WORK OVERTIME, BUT IF WE ARE TO BELIEVE THAT MRS. PETRIE WAS NOT AWARE THAT MRS. DE SILVA WAS TO BE DISCHARGED WE MUST IGNORE HER PART IN GIVING TO MRS. CURRY THE REPAIR WORK ON THE PREVIOUS MONDAY OR TUESDAY AND HER APPARENT COMPLAINTS TO MRS. CURRY ABOUT MRS. DE SILVA'S WORK. WITHOUT ANY OTHER EVIDENCE TO CONSIDER, THE SEQUENCE OF EVENTS INCLUDING THE TIMING AND MANNER IN WHICH MRS. DE SILVA WAS DISCHARGED, ARE MORE CONSISTENT WITH A DECISION MADE BY THE RESPONDENT ON THURSDAY OR FRIDAY THAT WEEK TO DISCHARGE MRS. DE SILVA RATHER THAN AT THE TIME STATED BY MRS. CURRY OR MR. WINTERS.

15. GENERALLY, THEREFORE, WE HAVE CONSIDERABLE DOUBT OF IMPORTANT PARTS OF THE EVIDENCE GIVEN IN SUPPORT OF THE RESPONDENT AS AGAINST THAT OF THE AGGRIEVED PERSON AND THE OTHER

WITNESSES ON HER BEHALF WHO APPEARED TO GIVE A MORE PROBABLE ACCOUNT OF THE EVENTS SURROUNDING THIS MATTER, AND WHOSE EVIDENCE WE PREFER.

16. HAVING REGARD TO THE KNOWLEDGE OF THE RESPONDENT OF THE COMPLAINANT'S ORGANIZING CAMPAIGN; OF ITS OBVIOUS CONCERN TO FIND OUT THE SUPPORTERS OF THE UNION AS DESCRIBED IN THE INCIDENT CONCERNING MRS. CATUNTO; THE SUDDEN DISCHARGE OF MRS. DE SILVA (AN EMPLOYEE WITH CONSIDERABLE SENIORITY) FOLLOWING THAT INCIDENT; AND HAVING REGARD TO THE REASONS GIVEN BY THE RESPONDENT FOR ITS ACTIONS AND THAT IT IS THE ONLY PARTY WITH KNOWLEDGE OF SUCH REASONS; WE MUST CONCLUDE, ON THE BALANCE OF PROBABILITIES, THAT MRS. DE SILVA WAS DISCHARGED BY THE RESPONDENT BECAUSE OF HER SUPPORT OR THE RESPONDENT'S BELIEF OF HER SUPPORT, FOR THE COMPLAINANT TRADE UNION.

17. WE THEREFORE FIND THAT THE AGGRIEVED PERSON WAS DISCHARGED BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50(A) OF THE ACT. ACCORDINGLY OUR DETERMINATION OF THE ACTION TO BE TAKEN BY THE RESPONDENT IS AS FOLLOWS:

1. THE RESPONDENT SHALL FORTHWITH REINSTATE AND EMPLOY MRS. DE SILVA TO THE SAME OR LIKE EMPLOYMENT WITH THE SAME WAGES AND EMPLOYMENT BENEFITS AS SHE HAD AND RECEIVED AT THE DATE OF HER DISCHARGE ON NOVEMBER 8TH, 1968.
2. AS COMPENSATION FOR HER LOSS OF WAGES AND EMPLOYMENT BENEFITS FROM NOVEMBER 8TH 1968 TO THE LAST DATE OF HEARING THE SUM OF \$864.00.
3. THE RESPONDENT AND THE COMPLAINANT SHALL MEET FORTHWITH WITH A VIEW TO AGREING ON THE AMOUNT OF LOSS OF EARNINGS AND EMPLOYMENT BENEFITS, IF ANY, NOW SUSTAINED OR WHICH MAY HEREAFTER BE SUSTAINED BETWEEN THE LAST DATE FOR THE HEARING (APRIL 24TH, 1969) AND THE DATE OF HER ACTUAL RE-EMPLOYMENT BY THE RESPONDENT. IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES WITHIN 14 DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON, THE AMOUNT OF ANY SUCH FURTHER COMPENSATION PAYABLE, IF ANY, WILL BE DETERMINED BY THE BOARD UPON THE MOTION OF EITHER PARTY FOR THAT PURPOSE.

DISSENT OF BOARD MEMBER F.W. MURRAY:

MAY 29, 1969.

1. I DISSENT.
2. I ACCEPT THE EVIDENCE OF MRS. CURRY THAT SHE HAD ON A NUMBER OF OCCASIONS SPOKEN TO MRS. DE SILVA ABOUT THE QUALITY AND QUANTITY OF HER WORK. THE CONFLICT OF TESTIMONY IN THIS RESPECT DOES NOT, IN MY OPINION, SUPPORT THE CLAIM BY MRS. DE SILVA THAT SHE HAD NOT BEEN SPOKEN TO ON THESE MATTERS BY EITHER MRS. PETRIE OR MRS. CURRY.
3. THE EVIDENCE ON THIS POINT IS OUTLINED IN THE MAJORITY AWARD, AND FOR EXAMPLE, IN PARAGRAPH 10, MRS. DE SILVA IN REPLY CLAIMED THAT SHE HAD NEVER BEEN CRITICISED FOR HER WORK BY MRS. CURRY, OR THAT SHE HAD NEVER BEEN TOLD BY HER THAT HER WORK WAS SLOW OR THAT THERE WAS ANYTHING WRONG. MRS. DE SILVA CLAIMS THAT SHE HAD NO DISCUSSION CONCERNING ANY PROBLEM ABOUT BUNDLES, AND YET CLAIMED THAT SHE TOLD MRS. PETRIE "AT THE TIME" THAT THE BUNDLES WERE MIXED BEFORE SHE RECEIVED THEM AT HER MACHINE. THIS CLEARLY INDICATES TO ME THAT ON THE ONE HAND SHE WAS DENYING THAT THERE HAD BEEN ANY DISCUSSION ON THE QUESTION OF MIXING BUNDLES, WHILE ON THE OTHER HAND IT IS QUITE CLEAR THAT THERE MUST HAVE BEEN SOME DISCUSSION, OTHERWISE SHE WOULD NOT HAVE PREFERRED THIS EXPLANATION TO HER FORELADY.
4. MOREOVER, IT IS QUITE CLEAR THAT MRS. DE SILVA'S SUPERVISION WAS INDEED MOVING HER FROM ONE OPERATION TO ANOTHER IN AN ATTEMPT TO FIND WORK WHICH SHE COULD PERFORM PROFICIENTLY, AND I ACCEPT THE EVIDENCE OF MRS. CURRY THAT ON SEVERAL OCCASIONS WHEN SHE WAS MOVED, MRS. DE SILVA WAS SPOKEN TO CONCERNING THE CAUSE FOR HER BEING MOVED. IT IS IMPORTANT TO NOTE THAT THESE INCIDENTS OCCURRED BEFORE THE UNION ORGANIZING CAMPAIGN COMMENCED, AND THAT MRS. CURRY HERSELF BELIEVED THAT THE COMPLAINANT SHOULD BE DISMISSED FOR HER FAILURE TO WORK WITH REASONABLE PROFICIENCY, AGAIN WELL BEFORE THE ORGANIZING CAMPAIGN COMMENCED. IT WAS MR. CARP WHO DELAYED THE FINAL DECISION.
5. I DO NOT SHARE MY COLLEAGUES OPINION AS TO THE IMPORTANCE OF THE APPARENT IMPROVED QUANTITY OF PRODUCTION MRS. DE SILVA EXPERIENCED JUST PRIOR TO HER DISCHARGE. IT IS QUITE CLEAR THAT THESE FIGURES WERE NOT CONSIDERED AT THE TIME OF HER DISMISSAL. THE EVIDENCE DISCLOSES THAT THE FIGURES WOULD HAVE BEEN AVAILABLE BY A SEARCH OF THE INDIVIDUAL DAILY PRODUCTION RECORDS, BUT THESE FIGURES HAD NOT AT THAT TIME BEEN ADDED TO THE REGULAR COMPILATION RECORD DATA USED BY THE PRODUCTION DEPARTMENT, AND IT WAS UPON A REVIEW OF THIS DATA THAT THE DECISION WAS REACHED. THE FACT THAT HER LAST FEW DAYS OF PRODUCTION HAD NOT BEEN ENTERED INTO THESE RECORDS IS TO ME A REASONABLE EXPLANATION FOR THE FACT THAT THEY WERE NOT CONSIDERED AT THE TIME OF HER DISMISSAL, PARTICULARLY IN VIEW OF THE FACT THAT THE PRODUCTION FIGURES THAT WERE IMMEDIATELY AVAILABLE IN REVIEW SHOWED SUCH A CONSISTENTLY LOW PRODUCTION RATE.

6. MRS. CURRY'S EVIDENCE IN MY OPINION, CONCERNING THE QUALITY OF THE COMPLAINANT'S WORK IS ALSO ACCEPTABLE, AND WAS GIVEN IN A STRAIGHT FORWARD MANNER. IN MY OPINION, MRS. CURRY'S CONCERN OVER THIS QUALITY OF WORKMANSHIP WAS GENUINE. THERE IS NO DOUBT THAT THE FACT THAT THE COMPLAINANT HAD TO RE-DO SO MANY GARMENTS WOULD CERTAINLY CONTRIBUTE TO HER FAILURE TO MAKE THE PIECE WORK RATE.

7. RUNNING THROUGH ALL OF THE EVIDENCE IT IS QUITE CLEAR THAT MRS. CURRY HAD DIFFICULTY CONVINCING HER SUPERIORS THAT THE COMPLAINANT SHOULD BE DISMISSED AND THIS, IN MY OPINION, IS NOT CONSISTENT WITH THE CONCLUSION THAT THE AGGRIEVED PERSON WAS DISCHARGED BY THE RESPONDENT IN CONTRAVENTION OF THE PROVISIONS OF SECTION 50(A) OF THE ACT.

8. TAKING ALL OF THE EVIDENCE INTO CONSIDERATION, I WOULD FIND THAT THE COMPLAINT BE DISMISSED.

15598-68-U: ONTARIO HYDRO EMPLOYEES' UNION, LOCAL 1000 CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) v. HYDRO ELECTRIC POWER COMMISSION OF ONTARIO (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: E.B. JOLLIFFE, Q.C., K. CUMMINGS,
W. McCULLOUGH FOR THE COMPLAINANT; R.V. HICKS, Q.C.,
H.M. ROSSMAN, W.A. YULE FOR THE RESPONDENT.

DECISION OF O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBER
O. HODGES: MAY 5, 1969.

1. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO AND THE APPLICANT HAD BEEN PARTIES TO A COLLECTIVE AGREEMENT. BOTH PARTIES ARE IN AGREEMENT THAT THE COLLECTIVE AGREEMENT HAD CEASED TO OPERATE, THAT THE PARTIES HAD APPLIED FOR CONCILIATION AND THAT THE BOARD OF CONCILIATION HAD REPORTED ON DECEMBER 10TH 1968. ACCORDINGLY, THE PARTIES ARE IN AGREEMENT THAT ALL OF THE CONDITIONS WHICH WOULD ALLOW THE COMPLAINANT TO ENGAGE IN A STRIKE AND THE RESPONDENT TO ENGAGE IN A LOCK-OUT HAVE BEEN SATISFIED. THE LABOUR RELATIONS ACT, S. 54. THESE MATTERS THEREFORE ARE NOT IN ISSUE.

2. ON JANUARY 17TH 1969 DAVID POGUE, WHO IS A MEMBER OF THE COMPLAINANT UNION, AND OTHER EMPLOYEES REFUSED TO WORK OVERTIME; AS A RESULT HE AND THE OTHERS WERE SUSPENDED FOR ONE DAY. ACCORDINGLY THE COMPLAINANT BROUGHT THIS COMPLAINT PURSUANT TO S. 65 OF THE LABOUR RELATIONS ACT ALLEGING THAT MR. POGUE AND OTHERS HAD BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF

SO. 50(A), 50(C) AND 52 OF THE LABOUR RELATIONS ACT. THE INSTANT CASE CONCERNS MR. POGUE ONLY.

3. THE FACTS LEADING TO THE SUSPENSION OF DAVID POGUE ARE AS FOLLOWS. ON JANUARY 3, 1969 THE RESPONDENT ISSUED A MEMORANDUM TO MEMBERS OF ITS MANAGEMENT STAFF. THAT MEMORANDUM FILED AS EXHIBIT 5 STATES:

"
CONFIDENTIAL TO MEMBERS
MEMORANDUM TO OF MANAGEMENT STAFF

LOCATION OR DEPT DATE JANUARY 3, 1969

FILE

SUBJECT LABOUR SITUATION WITH THE OHEU

FOLLOWING ITS REJECTION ON DECEMBER 18 OF THE COMMISSION'S OFFER WITH RESPECT TO THE CONCILIATION BOARD REPORT, THE O.H.E.U. ANNOUNCED IT WOULD SEEK APPROVAL FROM THE EMPLOYEES FOR A ROTATIONAL STRIKE. THE TIME REQUIRED TO CARRY OUT A UNION VOTE ON THIS RECOMMENDATION APPEARS TO REMOVE THE POSSIBILITY OF A ROTATIONAL STRIKE UNTIL THE END OF JANUARY OR THE FIRST OF FEBRUARY.

OF MORE IMMEDIATE CONCERN, HOWEVER, IS THE UNION RECOMMENDATION TO THE EMPLOYEES ON DECEMBER 23 FOR A DELAYING WORK-TO-RULE PLAN AND A REFUSAL TO WORK ALL BUT EMERGENCY OVERTIME.

REPORTS INDICATE THAT REFUSAL TO WORK OVERTIME AND A WORK TO RULE PROGRAM ARE BEING ADOPTED IN VARYING DEGREES BY SOME COMMISSION EMPLOYEE GROUPS AT SEVERAL WORK LOCATIONS.

ON JANUARY 2, THE COMMISSION DESPATCHED A TELEGRAM TO THE OHEU REGISTERING GRAVE CONCERN ABOUT THE UNION'S PROPOSED ACTIONS. THE TELEGRAM CONCLUDED WITH AN OFFER TO SUBMIT THE ISSUES IN DISPUTE TO AN IMPARTIAL FACT-FINDING STUDY FOR FINAL AND BINDING RESOLUTION.

IN ORDER TO PLACE THE PRESENT RELATIONS BETWEEN THE COMMISSION AND THE OHEU IN PROPER PERSPECTIVE IT MUST BE REMEMBERED THAT A COLLECTIVE AGREEMENT NO LONGER EXISTS LEGALLY BETWEEN THE PARTIES.

IN SPITE OF THIS, THE COMMISSION INTENDS TO CONTINUE EXISTING WORK CONDITIONS FOR THE TIME BEING. HOWEVER, THERE IS NO LEGAL COMMITMENT TO DO SO AND OUR OBSERVANCE OF SUCH THINGS AS HOURS OF WORK, OVERTIME AND PREMIUM PAYMENTS ARE GOVERNED ONLY BY THE MINIMUM REQUIREMENTS OF PROVINCIAL LEGISLATION.

WITHOUT A COLLECTIVE AGREEMENT, BOTH THE COMMISSION AND THE EMPLOYEES MUST MEET THE PROVISIONS OF THIS LEGISLATION. IN THE CASE OF OVERTIME, WE ARE FREE TO ASSIGN NORMAL WORK AS REQUIRED UP TO 48 HOURS PER WEEK AND BEYOND THIS EMERGENCY WORK AS DEFINED BY MANAGEMENT, WITHOUT LIMIT. THE UNION DOES NOT HAVE THE RIGHT AT ANY TIME TO MAKE ANY DETERMINATION AS TO WHAT IS OR IS NOT OVERTIME WORK, EMERGENCY WORK, OR RULES OR WORK; NOR DOES THE UNION HAVE THE RIGHT TO ISSUE WORK ORDERS OR INSTRUCTIONS TO THE EMPLOYEES.

BEYOND THESE LEGISLATIVE IMPERATIVES IS A MORE FUNDAMENTAL CONSIDERATION. THE PRIME CONCERN OF THE COMMISSION IS TO LIVE UP TO THE SPECIAL RESPONSIBILITIES WHICH IT HOLDS TO THE PEOPLE OF THE PROVINCE. THIS IS A RESPONSIBILITY WHICH ALL HYDRO PEOPLE HOLD, WHETHER MANAGEMENT EMPLOYEE OR EMPLOYEE WITHIN THE UNION.

IT IS A RESPONSIBILITY WHICH IS NOT A MATTER OF NEGOTIATION, OR COLLECTIVE AGREEMENT, OR WORK RULES. IT IS ABOVE ALL OF THESE AND MOST HYDRO EMPLOYEES RECOGNIZE THIS FACT. IT WOULD APPEAR THE UNION RECOGNIZES IT ALSO FOR IT HAS DECLARED ITS INTENTION TO CO-OPERATE IN MAINTAINING SERVICE AND I HAVE NO REASON TO DOUBT THE SINCERITY OF THE UNION DECLARATION.

HOWEVER, PRACTICAL CONSIDERATION GIVES RISE TO SERIOUS MISGIVINGS ABOUT OUR ABILITY TO MAINTAIN SERVICE IF THE UNION RECOMMENDATIONS ARE FOLLOWED WIDELY BY THE EMPLOYEES. IN MANY CIRCUMSTANCES, IT IS CERTAIN THAT WORK-TO-RULE AND OVERTIME REFUSALS WILL EVENTUALLY INTERRUPT SERVICE. MANAGEMENT CANNOT ALLOW THIS TO HAPPEN AND THE FOLLOWING IS OFFERED AS SUGGESTED ACTION TO PREVENT IT.

WHERE EMPLOYEES' PERFORMANCE IN REGARD TO OVERTIME OR WORK RULES CLEARLY THREATENS CONTINUED SERVICE, SUPERVISORS SHOULD TAKE PROMPT ACTION.

CONFRONTATION WITH EMPLOYEES ON LESSER GROUNDS THAT A THREATENED SERVICE INTERRUPTION SHOULD BE AVOIDED.

AS A FIRST STEP, THE SUPERVISOR SHOULD REMIND THE EMPLOYEE OR EMPLOYEES CONCERNED OF THEIR SPECIAL RESPONSIBILITIES TO THE PUBLIC AS A HYDRO WORKER AND THEIR RESPONSIBILITIES UNDER LEGISLATION. AN ADDED REMINDER OF THE DECLARED INTEREST OF THE UNION IN PRESERVING SERVICE TO THE PUBLIC SHOULD ALSO BE MADE.

IF THESE REMINDERS FAIL, THE SUPERVISOR SHOULD CLEARLY WARN THE EMPLOYEE OR EMPLOYEES THAT DISCIPLINARY ACTION IS THE ONLY ALTERNATIVE LEFT TO HIM. IT IS BEST IF THE WARNING IS CARRIED OUT IN THE COMPANY OF A FELLOW MEMBER OF MANAGEMENT.

IF THE WARNING DOES NOT PRODUCE RESULTS, THE SUPERVISOR SHOULD UNDERSTAND THAT HE CAN SUSPEND THE EMPLOYEE OR EMPLOYEES AND SEEK OTHERS TO CARRY OUT THE DUTIES. TO ENSURE A REASONABLY CONSISTENT APPLICATION OF DISCIPLINARY ACTION, THE LABOUR RELATIONS DIVISION IS MAINTAINING A TELEPHONE ADVICE SERVICE FOR THE DURATION OF THE CRISIS.

IN ISSUING THESE DIRECTIONS, I AM FULLY AWARE OF THE DIFFICULT POSITION IN WHICH THEY PLACE OUR SUPERVISORS AND OTHER MEMBERS OF MANAGEMENT. IT IS A SITUATION WHICH WILL DRAW HEAVILY UPON THE TACT, TOLERANCE AND EXPERIENCE OF OUR MANAGEMENT PEOPLE."

4. ON JANUARY 6TH, 1969 THE COMPLAINANT ISSUED A CHIEF STEWARD'S BULLETIN FILED AS EXHIBIT #9 WHICH PROVIDES INTER ALIA:

"CHIEF STEWARD'S BULLETIN"

PLEASE NOTE THE CONTENTS OF THE ENCLOSED MANAGEMENT MEMO. AS YOU CAN SEE, OUR WORK TO RULE AND OVERTIME LIMITATIONS ARE HAVING AN EFFECT ON MANAGEMENT ALREADY.

NO DOUBT MANY LOCAL MANAGEMENT WILL INTERPRET THIS AS A DIRECTIVE TO HOLD EMPLOYEE MEETINGS AT WHICH THEY WILL STRESS THE NECESSITY OF FOLLOWING THE GOSPEL ACCORDING TO GATHERCOLE.

FOR CLARIFICATION WE QUOTE SEC. 1, SUB-SECTION (1) OF THE LABOUR RELATIONS ACT OF ONTARIO:

- (1) "STRIKE INCLUDES A CESSATION OF WORK, A REFUSAL TO WORK OR TO CONTINUE TO WORK BY EMPLOYEES IN COMBINATION OR IN CONCERT OR IN ACCORDANCE WITH A COMMON UNDERSTANDING, OR A SLOW-DOWN OR OTHER CONCERTED ACTIVITY ON THE PART OF EMPLOYEES DESIGNED TO RESTRICT OR LIMIT OUTPUT;"

THIS DEFINITION SEEMS TO COVER OUR WORK TO RULE AND OVERTIME LIMITATION, THEREFORE SECTION 2 WOULD APPLY:

- (2) "FOR THE PURPOSE OF THIS ACT, NO PERSON SHALL BE DEEMED TO HAVE CEASED TO BE AN EMPLOYEE BY REASON ONLY OF HIS CEASING TO WORK FOR HIS EMPLOYER AS THE RESULT OF A LOCK-OUT OR STRIKE OR BY REASON ONLY OF HIS BEING DISMISSED BY HIS EMPLOYER CONTRARY TO THIS ACT OR TO A COLLECTIVE AGREEMENT."

WHICH MEANS THAT SINCE OUR ACTIONS SEEM TO FIT THE DEFINITION OF A "STRIKE", DISCIPLINE IMPOSED BY MANAGEMENT AS A RESULT OF THE "STRIKING" ACTIONS (REFUSAL TO WORK OVERTIME, ETC.) WOULD BE IN CONTRAVENTION OF SECTION 2 AND THEREFORE CONTRARY TO THE ACT AND ILLEGAL. THIS WOULD LEAVE MANAGEMENT OPEN TO PROSECUTION BY THE UNION UNDER THE TERMS OF THE LABOUR RELATIONS ACT.

THIS ALSO MEANS THAT THE HOURS OF WORK ACT ETC., DO NOT IN ANY WAY OBLIGE US TO WORK OVERTIME SINCE AN OVERTIME BAN IS A STRIKING ACT AND OBVIOUSLY THE HOURS OF WORK ACT, ETC., DOES NOT APPLY TO OR LIMIT STRIKERS."

5. ON JANUARY 10, 1969 THE RESPONDENT ISSUED A FURTHER MEMORANDUM TO MEMBERS OF ITS MANAGEMENT STAFF FILED AS EXHIBIT 8 WHICH PROVIDES:

"CONFIDENTIAL TO
MEMBERS OF MANAGEMENT DATE JANUARY 10, 1969
STAFF
FILE

SUBJECT LABOUR SITUATION WITH THE OHEU

IN MY LETTER OF JANUARY 3, 1969, I OUTLINED THE MAIN DEVELOPMENTS IN THE OHEU SITUATION AND ATTEMPTED TO PROVIDE GENERAL DIRECTION TO SUPERVISORS IN MEETING THE ACTIONS OF THE EMPLOYEES.

IN THE INTERVAL, EVENTS HAVE INDICATED A NEED TO CLARIFY THESE DIRECTIONS PARTICULARLY WHERE I STATED THAT CONFRONTATION WITH EMPLOYEES SHOULD BE AVOIDED UNLESS THEIR ACTIONS CLEARLY THREATENED CONTINUED SERVICE. MY REFERENCE TO CONTINUED SERVICE WAS MADE IN THE BROADEST TERMS AND ASSUMED THAT ALL SUPPORTIVE PROGRAMS WOULD BE SEEN AS INTEGRAL PARTS OF SERVICE CONTINUITY.

ONTARIO HYDRO IS A SERVICE ORGANIZATION AND, AS SUCH, ALL OF ITS ACTIVITIES ARE DIRECTED TOWARD THIS GOAL. WIDESPREAD OR PROTRACTED INTERFERENCE WITH ANY OF THE ACTIVITIES OF THE COMMISSION WILL INEVITABLY DIMINISH OR INTERRUPT SERVICE TO THE PUBLIC.

THE COMMISSION IS CARRYING ON ITS BUSINESS OF PROVIDING ALL SERVICES TO ITS CUSTOMERS AND IT CANNOT PERMIT THE EMPLOYEES AND THE UNION TO DICTATE WHAT SERVICES WILL OR WILL NOT BE CONTINUED. OUR RESPONSIBILITY TO THE PUBLIC REQUIRES REASONABLE STANDARDS OF WORK CONDUCT FROM THE EMPLOYEES AND THE PERFORMANCE BY THEM OF NORMAL OVERTIME AS ASSIGNED. WHERE IN THE GOOD JUDGMENT OF OUR SUPERVISORS, A REFUSAL TO WORK OVERTIME OR RIGID FOLLOWING OF SO-CALLED WORK-TO-RULE PRINCIPLES INTERFERE WITH THE NORMAL CONDUCT OF OUR BUSINESS THE ONLY ALTERNATIVE LEFT IS TO TAKE DISCIPLINARY ACTION AS OUTLINED IN MY FIRST LETTER."

6. ON JANUARY 17, 1969 DAVID POGUE COMMENCED WORK AT 7:45 A.M. AND WORKED THE FULL DAY WITH MEMBERS OF HIS CREW. HIS NORMAL QUITTING TIME WAS 4:45 P.M. AT ABOUT 4:30 P.M. SOME OF THE MEMBERS OF THE CREW WERE INFORMED THAT TROUBLE HAD ARisen ON AN ALTERNATE LINE WHICH WAS NOT BEING USED AT THE TIME. THAT ALTERNATE LINE IN ADDITION TO FEEDING OTHERS, COULD BE USED FOR THE PURPOSE OF FEEDING THE WELLAND CHEMICAL COMPANY, INTERNATIONAL NICKEL COMPANY AND NORTON ABRASIVE COMPANY WHICH WERE ALLEGED TO BE MAJOR INDUSTRIES. ACCORDINGLY THE MEMBERS OF THE CREW INCLUDING MR. POGUE WERE ASKED TO WORK OVERTIME BY MR. WATTS, THE AREA FOREMAN. CERTAIN MEMBERS OF THE CREW CONSULTED WITH THEIR UNION STEWARD AND IT WAS DECIDED THAT THE SITUATION WAS NOT AN EMERGENCY. THE CONSULTATIONS BY THE EMPLOYEES WERE HELD ON THE COMPANY'S PREMISES AND DURING THE COURSE OF THOSE DELIBERATIONS MEMBERS OF MANAGEMENT HAD VARIOUS CONVERSATIONS WITH THE CREW MEMBERS ABOUT THE OVERTIME EMERGENCY SITUATION AND ABOUT OTHER MATTERS. ROBERT WATTS, THE AREA FOREMAN, INVOLVED IN THE INSTANT SITUATION, TESTIFIED THAT HE RECEIVED A CALL AT 4:50 P.M. WHICH PINPOINTED THE TROUBLE, AND AT THE CONCLUSION OF THEIR DELIBERATIONS AT 6:20 P.M.,

HE WAS INFORMED BY THE CREW MEMBERS THAT IN THEIR OPINION AND IN THE OPINION OF THE UNION THE SITUATION WAS NOT AN EMERGENCY AND THEY WERE NOT GOING TO WORK OVERTIME. AS A RESULT OF THIS REFUSAL TO WORK OVERTIME MR. WATTS, WITH TWO OTHER AVAILABLE MEMBERS OF MANAGEMENT ATTENDED TO THE REPAIRS. THESE REPAIRS WERE COMPLETED BETWEEN 7:00 P.M. AND 9:00 P.M. IT APPEARS THAT DURING THIS PERIOD MEMBERS OF MANAGEMENT WERE AVAILABLE TO PERFORM WORK WHICH UNION MEMBERS WOULD NOT PERFORM BECAUSE OF THE LABOUR DISPUTE.

7. FURTHER TESTIMONY REVEALED THAT IF THE LINE WHICH FED WELLAND CHEMICAL BROKE IT WOULD TAKE ABOUT THREE HOURS TO RESTORE POWER. ON THIS PARTICULAR OCCASION THERE WAS NO INTERRUPTION OF SERVICE BECAUSE THERE WAS ANOTHER LINE IN OPERATION. EVIDENCE WAS ADDUCED BY THE RESPONDENT THROUGH MR. WATTS THAT IT WOULD TAKE "UPWARDS OF ONE WEEK TO RESTORE THE PROCESS AT WELLAND CHEMICAL" AND THAT HE WAS TOLD THIS BY THE ENGINEER OF WELLAND CHEMICAL. MR. WATTS ALSO STATED THAT THE NORTON ABRASIVE COMPANY WOULD TAKE TWO OR THREE WEEKS TO GET INTO PRODUCTION IF THEY LOST POWER. HE ALSO STATED THERE WERE NO OTHER MAJOR CUSTOMERS ON THAT LINE. R. S. GRIFFIN, THE OPERATIONS ENGINEER, FOR THE RESPONDENT FURTHER STATED THAT "WELLAND CHEMICAL CAN'T STAND A VERY LONG POWER INTERRUPTION, THAT ANYTHING MOMENTARY IS COSTLY AND THEY [WELLAND CHEMICALS] INTIMATE THAT IT WOULD BE AN EXPLOSIVE SITUATION IF THERE IS INTERRUPTION FOR MORE THAN AN HOUR." HE FURTHER TESTIFIED THAT THERE WAS A STRIKE AT WELLAND CHEMICAL ON JANUARY 17TH BUT IT WAS OPERATING AT 2/3 CAPACITY. HIS INFORMATION WAS OBTAINED FROM THE CONSUMER SERVICE ENGINEERS OF THE RESPONDENT WHO WERE IN CONTACT WITH THE PEOPLE AT WELLAND CHEMICAL.

8. OTHER RELEVANT FACTORS EMERGING FROM THE EVIDENCE ARE THAT THE UNION HAD ADVISED ITS MEMBERS NOT TO WORK ON JOBS WHICH THE UNION DID NOT DEEM AN EMERGENCY AND THAT THE RESPONDENT'S POSITION WAS "THAT ANYTIME WE [THE RESPONDENT] CALL AN EMPLOYEE OUT IT IS AN EMERGENCY, AND IF THERE WAS ANY CHANGE OF A CUSTOMER GOING WITHOUT POWER WE [THE RESPONDENT] WOULD CONSIDER IT AN EMERGENCY AND TAKE ACTION." ALSO MR. BARNES, TESTIFYING FOR THE RESPONDENT, SAID THAT IF AN EMPLOYEE WAS ASKED TO WORK OVERTIME HE WAS BOUND TO DO SO AND IF A MAN REFUSED TO WORK OVERTIME OR ANY TIME THE RESPONDENT COULD IMPOSE A SUSPENSION.

9. IT APPEARS THAT IT HAD BEEN THE PRACTICE OF THE RESPONDENT BECAUSE OF THE NATURE OF ITS OPERATIONS, TO REQUIRE THE EMPLOYEES TO WORK OVERTIME; IN ADDITION, THE RESPONDENT PURSUANT TO THE EMPLOYMENT STANDARDS ACT, 1968 s.8(1) HAD SECURED THE

APPROVAL OF THE DIRECTOR OF EMPLOYMENT STANDARDS PERMITTING A WORK DAY IN EXCESS OF EIGHT HOURS. IT IS NOT NECESSARY TO DETERMINE WHETHER SUCH APPROVAL CONSTITUTED A PERMIT WITHIN THE PROVISIONS OF S. 9 OF THE EMPLOYMENT STANDARDS ACT, 1968.

10. THE FIRST ISSUE TO BE DECIDED IS WHETHER OR NOT THE ACTION TAKEN BY MR. POGUE AND THE OTHERS CONSTITUTED A STRIKE. THE LABOUR RELATIONS ACT S. (1)(1)(I) DEFINES STRIKE AS FOLLOWS:

"STRIKE" INCLUDES A CESSATION OF WORK, A REFUSAL TO WORK OR TO CONTINUE TO WORK BY EMPLOYEES IN COMBINATION OR IN CONCERT OR IN ACCORDANCE WITH A COMMON UNDERSTANDING, OR A SLOW-DOWN OR OTHER CONCERTED ACTIVITY ON THE PART OF EMPLOYEES DESIGNED TO RESTRICT OR LIMIT OUTPUT.'

THERE IS NO DOUBT THAT MR. POGUE ACTED IN COMBINATION OR IN CONCERT WITH OTHER EMPLOYEES AND REFUSED TO WORK OR TO CONTINUE TO WORK. THE EMPLOYEES IN THIS SITUATION ACTED ON THE ADVICE OF UNION OFFICIALS AND IN ACCORDANCE WITH A PRECONCEIVED PLAN IMPLICIT IN EXHIBIT 9 (REFERRED TO IN PARAGRAPH 4 OF THESE REASONS). HAVING REGARD TO THE EVIDENCE AND IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE WE FIND THAT THE REFUSAL TO WORK OVERTIME BY THE EMPLOYEES CONSTITUTED A STRIKE WITHIN THE MEANING OF THE LABOUR RELATIONS ACT. Cf. BEAVER SHEET AND SPORTSWEAR, CRAFT SPORTSWEAR LIMITED, ELITE SPORTSWEAR MANUFACTURING COMPANY LIMITED, OUTDOOR OUTFITS LIMITED UNITED SPORTSWEAR LIMITED v. UNITED GARMENT WORKERS OF AMERICA, LOCAL 252, 1964 JULY O.L.R.B. MTHLY, REP. 187. HARDING CARPETS LIMITED (BRANTFORD) v. THE CANADIAN TEXTILE COUNCIL, LOCAL No. 51, CLS 76-487, 56 CLLC 1564 (OLRB). THE INTERNATIONAL ASSOCIATION OF MACHINISTS IN RE THE TIMKEN ROLLER BEARING COMPANY (St. THOMAS) 2 LAC 693. RE UNITED STEELWORKERS LOCAL 2251 AND ALGOMA STEEL CORP. LTD. 11 LAC 118.

11. THE RESPONDENT CONTENDED THAT THE DEFINITION SECTIONS OF THE LABOUR RELATIONS ACT ONLY PREVAIL DURING THE PERIOD THAT THE RIGHT TO STRIKE OR LOCK-OUT IS PROHIBITED BY STATUTE AND THAT ONCE A STRIKE OR LOCK-OUT OCCURS THE COMMON LAW PREVAILS AND THE DEFINITION SECTIONS DO NOT APPLY. IN CANADIAN PACIFIC RAILWAY COMPANY v. ZAMBRI, 62 CLLC 450, 1962 S.C.R. 609 (SUPREME COURT OF CANADA), AFF'G 1962 O.R. 554 (C.A.); AFF'G 1962 O.R. 108; REV'G 1961 CCH, LLR p. 15,372, CARTWRIGHT J. STATED:

"THE ACT RECOGNIZES THAT STRIKES MAY BE LAWFUL OR UNLAWFUL, (SEE E.G. S. 57); IT APPEARS TO ME THAT IT LEAVES IT TO BE DETERMINED BY THE COMMON LAW WHETHER OR NOT A STRIKE IS LAWFUL; IT FORBIDS STRIKES WHICH WOULD OTHERWISE BE LAWFUL AT COMMON

LAW UNLESS CERTAIN CONDITIONS HAVE BEEN COMPLIES WITH, (SEE PARTICULARLY S. 54). IN THE CASE AT BAR THOSE CONDITIONS HAD BEEN FULFILLED WHEN THE STRIKE WAS CALLED. THE STRIKE WAS, IN MY OPINION, LAWFUL AT COMMON LAW AND NOT FORBIDDEN BY THE ACT. THAT BEING SO, IT APPEARS TO ME THAT THE EFFECT OF S. 1(2) IS (I) TO PROVIDE THAT WHILE THE STRIKE CONTINUES THE EMPLOYEES ON STRIKE DO NOT CEASE TO BE EMPLOYEES OF THE APPELLANT, AND (II) TO PREVENT THE EMPLOYER FROM TERMINATING THAT EMPLOYER-EMPLOYEE RELATIONSHIP BY REASON ONLY OF THE EMPLOYEE CEASING TO WORK AS THE RESULT OF THE STRIKE."

WE ARE SATISFIED THAT THE ACT BY ITS VERY TERMS RECOGNIZES THAT STRIKES MAY BE LAWFUL OR UNLAWFUL. CARTRIGHT J. EXPRESSLY DEALS WITH S.1(2) CONTINUING IN EFFECT DURING THE PERIOD THAT THE STRIKE CONTINUES. ACCORDINGLY WE REJECT THE ARGUMENT THAT THE LABOUR RELATIONS ACT CEASES TO OPERATE ONCE A LAWFUL STRIKE COMMENCES AND WE FIND THAT THE DEFINITION OF STRIKE CONTAINED IN THE ACT APPLIES BEYOND THE PERIOD OF PROHIBITION CONTAINED IN THE LABOUR RELATIONS ACT.

12. THE NEXT ISSUE TO BE DECIDED IS WHETHER OR NOT THERE WAS A LOCK-OUT BY THE RESPONDENT. THE LABOUR RELATIONS ACT DEFINES LOCK-OUT AS FOLLOWS:

S1(1)(g) "LOCK-OUT" INCLUDES THE CLOSING OF A PLACE OF EMPLOYMENT, A SUSPENSION OF WORK OR A REFUSAL BY AN EMPLOYER TO CONTINUE TO EMPLOY A NUMBER OF HIS EMPLOYEES, WITH A VIEW TO COMPEL OR INDUCE HIS EMPLOYEES, OR TO AID ANOTHER EMPLOYER TO COMPEL OR INDUCE HIS EMPLOYEES, TO REFRAIN FROM EXERCISING ANY RIGHTS OR PRIVILEGES UNDER THIS ACT OR TO AGREE TO PROVISIONS OR CHANGES IN PROVISIONS RESPECTING TERMS OR CONDITIONS OF EMPLOYMENT OR THE RIGHTS, PRIVILEGES OR DUTIES OF THE EMPLOYER, AN EMPLOYER'S ORGANIZATION, THE TRADE UNION, OR THE EMPLOYEES."

THE RESPONDENT DURING ARGUMENT CONCEDED THAT THE RESPONDENT DID NOT LOCK OUT MR. POGUE AND THE OTHERS. THE RESPONDENT FURTHER ADMITTED THAT WHATEVER OTHER ACTIVITY THE DEFINITION LOCK-OUT MIGHT EMBRACE BY REASON OF THE USE OF THE WORD "INCLUDES", THE ACTION TAKEN BY THE RESPONDENT IN THIS CASE WAS NOT (A) THE CLOSING OF A PLACE OF EMPLOYMENT, (B) A SUSPENSION OF WORK, OR (C) A REFUSAL BY AN EMPLOYER TO CONTINUE TO EMPLOY A NUMBER OF HIS EMPLOYEES. SEE JOYCE AND SMITH PLATING COMPANY LIMITED OF HAMILTON V. MARGARET FERNGLIO

ET AL 56 CLLC 1605, C.L.S. 76 - 523 (OLRB). MR. R. S. GRIFFIN THE OPERATIONS ENGINEER FOR THE NIAGARA REGION, TESTIFYING ON BEHALF OF THE RESPONDENT MADE THE FOLLOWING STATEMENTS DURING THE COURSE OF HIS TESTIMONY:

"I WAS PART OF THE DISCUSSION PROCESS OF PENALTIES."

"I AUTHORIZED THE IMPOSITION OF SUSPENSIONS."

LATER, REFERRING TO THE SUSPENSIONS OF THE VARIOUS EMPLOYEES MR. GRIFFIN STATED:

"THEY WERE SUSPENSIONS IMPOSED AS PENALTIES FOR REFUSAL AND FAILURE TO WORK OVERTIME ON JANUARY 17TH."

HAVING REGARD TO THE ARGUMENTS ADVANCED AND TO THE EVIDENCE, WE ARE SATISFIED THAT THE ACTION TAKEN BY MR. GRIFFIN WAS DISCIPLINARY ACTION IN ACCORDANCE WITH THE RESPONDENT'S POLICY AS OUTLINED IN EXHIBITS 5 AND 8 (WHICH ARE REFERRED TO IN PARAGRAPHS 3 AND 5 OF THESE REASONS) AND WE REFER PARTICULARLY TO THE STATEMENTS MADE BY THE RESPONDENT IN THE LAST THREE PARAGRAPHS OF EXHIBIT 5 AND THE LAST PARAGRAPH OF EXHIBIT 8. WE FURTHER FIND THAT THIS DISCIPLINARY ACTIVITY WAS NOT A LOCK-OUT AS DEFINED BY THE LABOUR RELATIONS ACT. OUR FINDING IN THESE CIRCUMSTANCES DOES NOT ABRIDGE THE EXPRESS RIGHT TO LOCK-OUT CONTAINED IN THE LABOUR RELATIONS ACT ONCE THE NECESSARY CONDITIONS HAVE BEEN SATISFIED.

13. IT NOW REMAINS TO RELATE THE ACTIVITY OF THE RESPONDENT TO THE ACTIVITY OF THE APPLICANT. SECTION 50(A) AND 50(C) OF THE LABOUR RELATIONS ACT PROVIDE:

"50. NO EMPLOYER, EMPLOYERS' ORGANIZATION OR PERSON ACTING ON BEHALF OF AN EMPLOYER OR AN EMPLOYERS' ORGANIZATION,

- (A) SHALL REFUSE TO EMPLOY OR TO CONTINUE TO EMPLOY A PERSON, OR DISCRIMINATE AGAINST A PERSON IN REGARD TO EMPLOYMENT OR ANY TERM OR CONDITION OF EMPLOYMENT BECAUSE THE PERSON WAS OR IS A MEMBER OF A TRADE UNION OR WAS OR IS EXERCISING ANY OTHER RIGHTS UNDER THIS ACT;
- (C) SHALL SEEK BY THREAT OF DISMISSAL, OR BY ANY OTHER KIND OF THREAT, OR BY THE IMPOSITION OF A PECUNIARY OR OTHER PENALTY, OR BY ANY OTHER MEANS TO COMPEL

AN EMPLOYEE TO BECOME OR REFRAIN FROM BECOMING OR TO CONTINUE TO BE OR TO CEASE TO BE A MEMBER OR OFFICER OR REPRESENTATIVE OF A TRADE UNION OR TO CEASE TO EXERCISE ANY OTHER RIGHTS UNDER THIS ACT. R.S.O. 1960, c. 202, s. 50; 1961-62, c. 68, s. 5."

WE FIND THAT THE RESPONDENT BY SUSPENDING MR. POGUE DISTINGUISHED HIM OR TREATED HIM DIFFERENTLY FROM OTHER EMPLOYEES WHO DID NOT ENGAGE IN A STRIKE OR OTHER LAWFUL ACTIVITY. THE TREATMENT ACCORDED TO MR. POGUE IS DISCRIMINATION AGAINST A PERSON IN REGARD TO HIS EMPLOYMENT AS DEFINED IN S. 50(A). FURTHER, WE FIND THAT THE RESPONDENT IN THIS CASE HAS IMPOSED A PENALTY WITHIN THE MEANING OF S. 50(C) BY SUSPENDING THE EMPLOYEES. THIS IS CORROBORATED BY THE TESTIMONY OF MR. GRIFFIN WHICH HAS BEEN QUOTED AND WHICH DIRECTLY REFERS TO THE SUSPENSION AS "SUSPENSIONS IMPOSED AS PENALTIES."

14. WE ARE COMPELLED TO FIND THAT THE STRIKE IN THE CIRCUMSTANCE OF THIS CASE WAS THE EXERCISE OF A RIGHT WITHIN THE MEANING OF THAT EXPRESSION AS IT IS CONTAINED IN S. 50(A) AND S. 50(C). CANADIAN PACIFIC RAILWAY COMPANY V. ZAMBRI, SUPRA.

15. THE PROVISIONS OF S. 50(A) HOWEVER REQUIRE A DETERMINATION IN THIS CASE THAT THE DISCRIMINATION REFERRED TO IN S. 50(A) WAS "BECAUSE....THE PERSON WAS....EXERCISING ANY OTHER RIGHTS UNDER THIS ACT." LIKEWISE, S. 50(C) REQUIRES A DETERMINATION THAT "THE IMPOSITION OF A PENALTY", WAS FOR THE PURPOSE OF COMPELLING "AN EMPLOYEE....TO CEASE TO EXERCISE ANY OTHER RIGHTS UNDER THIS ACT."

16. ONE OF THE PURPOSES OF THE LEGISLATION IS TO AFFORD BOTH PERSONS AND EMPLOYEES PROTECTION WHEN THEY ENGAGE IN LAWFUL UNION ACTIVITY OR AVAIL THEMSELVES OF THOSE RIGHTS CONTAINED IN THE LABOUR RELATIONS ACT. ENGAGING IN A LAWFUL STRIKE IS ONE OF THE PROTECTED RIGHTS AND THAT RIGHT IS BUTTRESSED BY THE STATUTORY CONTINUATION OF THE EMPLOYER-EMPLOYEE RELATIONSHIP NOT WITHSTANDING THE OCCURRENCE OF A STRIKE. IMPLICIT IN THE ACT IS THE RECOGNITION THAT EMPLOYEES MAY ENGAGED IN CERTAIN LAWFUL ACTIVITY OR STRIKE ACTIVITY IN ORDER TO ENHANCE THEIR POSITION AND THAT BY DOING THEY MAY CREATE STRESS ON THE EMPLOYER'S OPERATIONS.

17. AN EMPLOYER CANNOT TERMINATE THE STATUTORY CONTINUATION OF THE EMPLOYER-EMPLOYEE RELATIONSHIP SO AS TO RENDER NUGATORY S. 1(2) OF THE LABOUR RELATIONS ACT. CANADIAN PACIFIC RAILWAY COMPANY V. ZAMBRI, SUPRA; NOR CAN AN EMPLOYER BY PRETEXT SEEK TO ERODE THAT RELATIONSHIP. FOR EXAMPLE, AN EMPLOYER COULD NOT ENGAGE IN A SERIES OF WEEKLY OR DAILY SUSPENSIONS WHICH WOULD

HAVE THE EFFECT OF TERMINATING THE EMPLOYER-EMPLOYEE RELATIONSHIP - RETALIATORY ACTIVITY TAKEN BY AN EMPLOYER TO COMBAT A STRIKE MUST NOT VIOLATE THE PROVISIONS OF THE LABOUR RELATIONS ACT.

18. IN THE INSTANT CASE THE RESPONDENT ARGUES THAT IT DID NOT VIOLATE THE PROVISIONS OF THE LABOUR RELATIONS ACT AND JUSTIFIES THE SUSPENSION OF MR. POGUE ON THE INDEPENDENT GROUND THAT HE REFUSED TO WORK IN AN EMERGENCY. AN EXAMINATION OF THE FACTS REVEALS THAT THE LINE IN QUESTION WAS NOT IN USE AND THAT THERE WAS AN ALTERNATE LINE. ALTHOUGH THE TROUBLE WAS PINPOINTED AT 4:50 P.M. MEMBERS OF MANAGEMENT WHO WERE AVAILABLE TO PERFORM THE WORK WAITED FOR APPROXIMATELY TWO HOURS BEFORE COMMENCING TO PERFORM THE REPAIRS. THE CONCEPT OF EMERGENCY DEMANDS AN IMMEDIATE RESORT TO ACTION AND SHOULD NOT INVOLVE THE POSTPONEMENT OF THAT ACTION BY RESPONSIBLE PERSONS IN ORDER TO ENGAGE IN DISCUSSIONS AS TO THE CLASSIFICATION OF THE SITUATION AS OCCURRED IN THIS CASE - I.E. WHETHER OR NOT THERE WAS AN EMERGENCY AND BY WHOSE DEFINITION. THE ONLY REAL DANGER SUGGESTED BY THE RESPONDENT WAS WITH RESPECT TO WELLAND CHEMICAL AND THE FOUNDATION FOR THAT POSITION RESTS ON HEARSAY EVIDENCE. WHILE THE BOARD MAY IN SOME CIRCUMSTANCES BE PREPARED TO ACT ON HEARSAY EVIDENCE WE ARE NOT PREPARED TO ACT ON THE HEARSAY EVIDENCE TENDERED IN SUPPORT OF THIS VITAL ISSUE. WE FIND THAT THE SITUATION WAS NOT AN EMERGENCY AND THAT THE RESPONDENT CANNOT JUSTIFY THE SUSPENSION ON THAT GROUND.

19. WE ARE SATISFIED FROM THE DECLARED INTENTIONS OF THE RESPONDENT AND FROM THE MANNER IN WHICH IT PROCEEDED TO SUSPEND MR. POGUE THAT ITS ACTION WAS IN VIOLATION OF S. 50(A) AND S. 50(C) OF THE LABOUR RELATIONS ACT. IN COMING TO THIS CONCLUSION WE EXPRESS NO OPINION WHETHER OR NOT THE EMPLOYEES COULD ABRUPTLY WITHDRAW THEIR SERVICES IN THE FACE OF AN IMMINENT DANGER.

20. WE ARE ALSO NOT DECIDING THE EXACT NATURE OF THE RELATIONSHIP BETWEEN EMPLOYER AND EMPLOYEE WHICH WAS PRESERVED IN THIS CASE EXCEPT TO INDICATE THAT BY AGREEING TO PERFORM CERTAIN WORK, THE EMPLOYEES DID NOT SURRENDER THEIR RIGHT TO ENGAGE IN LAWFUL UNION ACTIVITY OR IN A STRIKE.

21. IN ADDITION TO THE OTHER AVAILABLE REMEDIES UNDER THE ACT FOR VIOLATION OF THE PROTECTED RIGHTS THE LEGISLATURE HAS ENACTED S. 65 WHICH PROVIDES THIS BOARD WITH REMEDIAL POWERS WHERE IT FINDS THAT THE LABOUR RELATIONS ACT HAS BEEN VIOLATED. WHILE SOME ARGUMENT WAS ADDRESSED TO THE BOARD AS TO WHETHER OR NOT IT SHOULD EMBARK ON A DETERMINATION PURSUANT TO S. 65 IN THIS CASE, WE DO NOT SEE ANY REASON TO CONFINE THE BOARD'S POWERS.

THE RIGHTS AFFORDED BY THE ACT SHOULD BE PROTECTED WHETHER OR NOT A STRIKE HAS ENSUED AND CONDUCT, IF IT VIOLATES THE ACT, SHOULD BE REMEDIED BY THE PROPER EXERCISE OF THE BOARD'S POWERS.

22. ACCORDINGLY, WE DETERMINE THAT MR. POGUE SHALL BE COMPENSATED FOR HIS LOSS OF EARNINGS AND OTHER EMPLOYMENT BENEFITS WHICH HE INCURRED AS A RESULT OF THE SUSPENSION HEREIN. THE RESPONDENT AND THE COMPLAINANT SHALL MEET FORTHWITH FOR THE PURPOSE OF AGREEING AS TO THE AMOUNT OF LOSS OF EARNINGS AND EMPLOYMENT BENEFITS SUSTAINED BY MR. POGUE AND, IN DEFAULT OF AGREEMENT BETWEEN THE PARTIES WITHIN SEVEN DAYS FROM THE DATE HEREOF AS TO THE LOSS OF EARNINGS AND EMPLOYMENT BENEFITS SUSTAINED AND PAYABLE TO MR. POGUE, EITHER PARTY MAY APPLY TO HAVE THE BOARD MAKE SUCH DETERMINATION AS IT DEEMS NECESSARY.

DISSENT OF BOARD MEMBER H.F. IRWIN:

MAY 5, 1969.

1. I DISSENT.

2. THIS IS A COMPLAINT MADE UNDER SECTION 65 OF THE LABOUR RELATIONS ACT BY ONTARIO HYDRO EMPLOYEES' UNION, LOCAL 1000, CANADIAN UNION OF PUBLIC EMPLOYEES (HEREINAFTER REFERRED TO AS THE "COMPLAINANT") IN RESPECT OF DAVID POGUE, THE AGGRIEVED EMPLOYEE, WHO IS EMPLOYED BY THE HYDRO ELECTRIC POWER COMMISSION OF ONTARIO (HEREINAFTER REFERRED TO AS THE "COMMISSION"). THE COMPLAINANT COMPLAINS THAT DAVID POGUE HAS BEEN DEALT WITH BY THE COMMISSION CONTRARY TO THE PROVISIONS OF SECTIONS 50(A) AND (C) AND 52 OF THE ACT AND REQUESTS THAT HE BE FULLY REINSTATED IN HIS EMPLOYMENT AND COMPENSATED FOR ANY LOSS IN WAGES SUFFERED BY HIM AS A RESULT OF THE ALLEGED OFFENCE.

3. THE ESSENTIAL FACTS IN THIS CASE ARE NOT IN DISPUTE.

4. THE AGGRIEVED EMPLOYEE, DAVID POGUE, ALONG WITH FIVE OTHER EMPLOYEES REFUSED TO WORK OVERTIME ON JANUARY 17TH, 1969 WHEN REQUESTED TO DO SO BY THE MANAGEMENT OF THE COMMISSION. ALL SIX EMPLOYEES WERE SUSPENDED FROM WORK FOR ONE DAY. NO COLLECTIVE AGREEMENT BETWEEN THE COMMISSION AND THE COMPLAINANT WAS IN EFFECT AT THE TIME AND THE STATUTORY PROHIBITIONS OF STRIKE AND LOCK-OUT WERE NO LONGER APPLICABLE. THE WORKING OF THE OVERTIME REQUESTED DID NOT VIOLATE ANY OTHER LEGISLATION.

5. CONSEQUENTLY, THE COMMISSION HAD EVERY RIGHT TO INSIST THE EMPLOYEES WORK OVERTIME AND TO DISCIPLINE THEM FOR REFUSING TO DO SO, PROVIDED THE ALLEGED PENALTY DID NOT PREVENT THEM FROM EXERCISING THEIR RIGHTS WITHIN THE MEANING AND INTENT OF THE LABOUR RELATIONS ACT.

6. IT IS CLEAR THAT THE EMPLOYEES HAD THE RIGHT TO PARTICIPATE IN A LAWFUL STRIKE UNDER THE ACT. HOWEVER, THEY WERE NOT ON "STRIKE" BUT WERE AT WORK WHEN REQUESTED TO PERFORM THE OVERTIME WORK. ADDITIONALLY, THE COMPLAINANT HAD AGREED THAT THE EMPLOYEES WOULD WORK OVERTIME WHEN AN EMERGENCY SITUATION EXISTED. I RESPECTFULLY DISAGREE WITH THE FINDING OF THE MAJORITY THAT THE CIRCUMSTANCES INVOLVED DID NOT CONSTITUTE AN EMERGENCY REQUIRING IMMEDIATE CORRECTION. IN ADDITION TO THE EVIDENCE REFERRED TO IN THE MAJORITY DECISION, IT IS ALSO PERTINENT IN THIS CONNECTION TO NOTE THAT A SIMILAR FAULT OCCURRED ON THE SAME POWER LINE EARLIER THE SAME DAY. IT TOOK MOST OF THE DAY ON THE PART OF TWO CREWS TO LOCATE AND CORRECT IT. MOREOEVER, CERTAIN OTHER EMPLOYEES ACCEPTED SIMILAR REPAIR WORK ON AN OVERTIME BASIS THE FOLLOWING SUNDAY. I AM BOUND TO ACCEPT THE JUDGMENT OF THE MANAGEMENT OF THE COMMISSION THAT AN EMERGENCY EXISTED PARTICULARLY WHEN THE EVIDENCE DEMONSTRATES THAT THEIR DECISION WAS MADE IN GOOD FAITH. BY REFUSING TO ACCEPT A REASONABLE INSTRUCTION FROM THEIR EMPLOYER WHILE AT WORK, THE EMPLOYEES RENDERED THEMSELVES LIABLE AT COMMON LAW TO APPROPRIATE DISCIPLINARY ACTION SUCH AS OCCURRED HERE.

7. ON THE OTHER HAND, IF THE EMPLOYEES COULD REFUSE SUCH WORK IN THE EXERCISE OF A RIGHT TO STRIKE UNDER THE ACT, DID THE ACTION OF THE COMMISSION IN SUSPENDING THEM FROM WORK FOR ONE DAY OFFEND THE STATUTE? IT MAY WELL BE THAT SECTIONS 50(A) AND (C) AND 52 CONTINUE TO OPERATE DURING A STRIKE, BUT DO THEY PROHIBIT WHAT THE COMMISSION DID IN THIS CASE?

8. IN THE NUMILK Co. LTD. CASE, CLLC 1960-64 TRANSFER BINDER, PARA.16,237, THE BOARD SAID AT PAGE 1056:

"IT IS AN ELEMENTARY RULE OF STATUTORY INTERPRETATION THAT EVERY PART OF A SECTION OF AN ENACTMENT MUST BE REVIEWED IN CONTEXT AND IN CONNECTION WITH THE WHOLE, SO AS TO MAKE, IF PRACTICABLE, ALL THE PARTS HARMONIZE AND GIVE A SENSIBLE AND INTELLIGENT EFFECT TO EACH. IT IS NOT TO BE PRESUMED THAT THE LEGISLATURE INTENDED ANY PART OF A STATUTE TO BE INCONSISTENT WITH OTHER PARTS OR TO BE WITHOUT MEANING (MONTREAL LIGHT, ETC. CO. V. MONTREAL, 1924 2 DLR 605)."

9. CONSEQUENTLY, SECTIONS 50(A) AND (C) AND 52 OF THE ACT MUST BE READ AND CONSIDERED ALONG WITH SECTIONS 1(1)(G) AND 54(2). ONCE THE REQUIREMENTS OF SECTION 54(2) HAVE BEEN FULFILLED, EMPLOYERS HAVE THE RIGHT TO RESPOND TO EMPLOYEES STRIKING BY INSTITUTING A LOCK-OUT WHICH INCLUDES, INTER ALIA, A REFUSAL BY AN EMPLOYER TO CONTINUE TO EMPLOY A NUMBER OF HIS EMPLOYEES, WITH A VIEW TO COMPEL OR INDUCE HIS EMPLOYEES TO REFRAIN FROM EXERCISING ANY RIGHTS OR PRIVILEGES UNDER THE ACT OR TO AGREE TO PROVISIONS

OR CHANGES IN PROVISIONS RESPECTING TERMS OR CONDITIONS OF EMPLOYMENT OR THE RIGHTS, PRIVILEGES OR DUTIES OF THE EMPLOYER, THE TRADE UNION OR THE EMPLOYEES. THE LOCK-OUT OR REFUSAL TO CONTINUE TO EMPLOY THE EMPLOYEES BY THE EMPLOYER MAY BE FOR A SPECIFIED PERIOD OF AN HOUR, A DAY, A WEEK, A MONTH OR FOR THE DURATION OF THE STRIKE OR SUCH LONGER PERIOD AS THE EMPLOYER MAY DECIDE. THE ONLY PROVISO UNDER THE ACT IS THAT THE EMPLOYEE SHALL NOT BE DEEMED TO HAVE CEASED TO BE AN EMPLOYEE BY REASON ONLY OF HIS CEASING TO WORK FOR HIS EMPLOYER AS A RESULT OF A LOCK-OUT OR A STRIKE (SECTION 1(2)). THERE IS NO SUCH ISSUE IN THE INSTANT CASE AS THERE HAS BEEN NO TERMINATION OF EMPLOYMENT OR EVEN A THREAT OF SUCH TERMINATION.

10. WHEN AN EMPLOYEE IS LOCKED-OUT, HE IS DENIED WORK AND PAY BY THE EMPLOYER. WHEN HE IS SUSPENDED FROM WORK IT IS PRECISELY THE SAME THING, A DENIAL OF WORK AND PAY. BOTH SUSPENSION AND LOCK-OUT ARE INSTITUTED FOR THE SAME PURPOSE, THAT IS, TO PLACE ECONOMIC PRESSURE ON THE EMPLOYEE TO ACCEPT THE TERMS OR CONDITIONS OF EMPLOYMENT STIPULATED BY THE EMPLOYER INCLUDING, AS HERE, SUCH A CONDITION AS OVERTIME ASSIGNMENTS. IF THE EMPLOYER CAN LAWFULLY LOCK-OUT EMPLOYEES AND DENY THEM WORK AND PAY FOR AN INDEFINITE PERIOD, THEN SURELY SUCH EMPLOYER CANNOT BE PENALIZED FOR EXERCISING A RIGHT UNDER THE ACT BY DENYING THE EMPLOYEES WORK AND PAY FOR ONLY ONE DAY TO ACCOMPLISH THE SAME PURPOSE. TO ATTEMPT TO DIFFERENTIATE BETWEEN A LOCK-OUT AND A SUSPENSION FROM WORK IN THE CIRCUMSTANCES OF THIS CASE IS MERELY AN EXERCISE IN SEMANTICS. THE INTENT, PURPOSE AND RESULT IN BOTH CASES ARE SYNONYMOUS. IMPLICIT IN THE RIGHT TO LOCK-OUT MUST BE THE RIGHT TO APPLY ANY LESSER FORM OF ECONOMIC SANCTION TO ACHIEVE ACCEPTANCE OF THE EMPLOYER'S CONDITIONS OF WORK.

11. ACCORDINGLY, IN GIVING EFFECT TO THE STATUTE AS A WHOLE, AND PARTICULARLY THE COMMISSION'S RIGHT TO LOCK-OUT, THE PROVISIONS OF SECTION 50(A) AND (C) AND 52 CANNOT APPLY BECAUSE, OTHERWISE, THEY WOULD ABROGATE THE COMMISSION'S CLEAR RIGHT OF LOCK-OUT UNDER THE STATUTE. ANY OTHER INTERPRETATION LEADS TO A MOST ABSURD RESULT.

12. ALTERNATIVELY, IN ORDER TO SUCCEED UNDER SECTIONS 50(A) AND (C) THE COMPLAINANT MUST SHOW THAT POGUE WAS DISCRIMINATED AGAINST BY THE COMMISSION BECAUSE THE REMAINING CONDITIONS OF THOSE PROVISIONS DO NOT APPLY TO THE CIRCUMSTANCES OF THIS CASE. HOWEVER, POGUE WAS TREATED IN THE SAME MANNER AS THE OTHER EMPLOYEES WHO WERE SIMILARLY INVOLVED. FURTHERMORE, IT MUST NOT ONLY BE SHOWN THAT HE WAS PENALIZED, BUT ALSO THAT THE PENALTY COULD NOT LAWFULLY BE IMPOSED. FOR THE REASONS SET FORTH ABOVE, IN MY OPINION THE ACTION TAKEN BY THE COMMISSION FELL WITHIN ITS RIGHT TO LOCK-OUT POGUE AND HIS FELLOW WORKERS. AS A RESULT, THE ALLEGATION OF DISCRIMINATION IS UNFOUNDED IN ANY EVENT.

13. THE MAJORITY DECISION APPEARS TO PLACE GREAT IMPORTANCE ON THE REASONS GIVEN IN CANADIAN PACIFIC RAILWAY V. ZAMBRI CASE, 62 CLLC 450 (SUPREME COURT OF CANADA) BY CARTWRIGHT, J. AT P. 455. I HAVE NO DIFFICULTY DISTINGUISHING THAT CASE FROM THE INSTANT CASE. THAT CASE DEALT WITH ALLEGED TERMINATION OF EMPLOYMENT CONTRARY TO SECTION 1(2) OF THE ACT WHEREAS THE INSTANT CASE DEALS WITH A SUSPENSION FROM WORK FOR ONE DAY. THERE HAS BEEN NO TERMINATION OF EMPLOYMENT AND THE STATUS OF DAVID POGUE AND THE FIVE OTHER EMPLOYEES WHO ACTED IN CONCERT WITH HIM HAS NOT CHANGED IN ANY WAY WHATSOEVER; INDEED, THEIR RIGHT TO STRIKE WAS IN NO WAY IMPAIRED. AS A RESULT, NEITHER THE CIRCUMSTANCES NOR THE ACTION COMPLAINED OF COME WITHIN THE REASONING OF THE C.P.R. DECISION.

14. FINALLY, IT SHOULD NOT BE OVERLOOKED THAT THE CIRCUMSTANCES INVOLVED IN THIS CASE TOOK PLACE WHEN THE STATUTORY RESTRICTIONS ON THE RIGHTS OF THE PARTIES TO RESORT TO ECONOMIC SANCTIONS AGAINST EACH OTHER OR THE EMPLOYEES NO LONGER APPLIED. IN MY RESPECTFUL OPINION, SECTION 65 WAS NEVER INTENDED TO APPLY TO SUCH CIRCUMSTANCES BUT RATHER WAS DESIGNED TO PROTECT EMPLOYEES IN THEIR NORMAL PURSUITS OF UNION REPRESENTATION AND MEMBERSHIP. IF THE CONTRARY WERE THE CASE THE SANCTIONS AVAILABLE TO THE PARTIES COULD NOT BE ENFORCED WITH ANY DEGREE OF EQUALITY BECAUSE THE EMPLOYEES COULD WITHHOLD THEIR SERVICES AT ANY TIME AND FROM TIME TO TIME WITH IMPUNITY, WHILE THE EMPLOYER WOULD BE RESTRICTED FROM RETALIATING. I CANNOT BELIEVE THAT SUCH INEQUITABLE AND ABSURD RESULT WAS EVER INTENDED. I CAN ONLY CONCLUDE THAT THESE CIRCUMSTANCES WERE NOT CONTEMPLATED WHEN THE STATUTE WAS ENACTED.

15. FOR THESE REASONS, I AM IMPELLED TO FIND THAT THERE HAS BEEN NO VIOLATION OF SECTIONS 50 (A) AND (C) AND 52 OF THE LABOUR RELATIONS ACT BY THE COMMISSION AGAINST DAVID POGUE AS ALLEGED BY THE COMPLAINANT AND I WOULD HAVE DISMISSED THE COMPLAINT.

16. IF I HAD FOUND THE COMMISSION GUILTY OF VIOLATING THE ACT AS ALLEGED BY THE COMPLAINANT, I WOULD CLASSIFY IT AS A TECHNICAL VIOLATION BECAUSE OF THE NECESSITY TO DISTINGUISH BETWEEN A SUSPENSION FROM WORK AND A LAWFUL LOCK-OUT WHICH HAD THE SAME END RESULT SO FAR AS THE AGGRIEVED EMPLOYEE WAS CONCERNED. HAVING REGARD

- TO THE APPARENT CONFLICT IN THE APPLICABLE PROVISIONS OF THE ACT;
- TO THE UNUSUAL MANNER IN WHICH THE COMPLAINANT CONDUCTED THE ROTATING STRIKE;
- THAT THE RESPONDENT COMMISSION IS A HIGHLY ESSENTIAL PROVINCE-WIDE AND PUBLICLY OWNED ELECTRICAL UTILITY;

- THAT THE COMPLAINANT HAD PREVIOUSLY INFORMED THE COMMISSION THAT THE EMPLOYEES WOULD PERFORM OVERTIME WORK IF AN EMERGENCY SITUATION OCCURRED;
- THAT RESPONSIBLE OFFICIALS OF THE COMMISSION DECLARED THE WORK INVOLVED TO BE AN EMERGENCY REQUIRING IMMEDIATE CORRECTION TO SAFEGUARD THE CONTINUOUS OPERATIONS OF THE INDUSTRIAL PLANTS WHICH THE TRANSMISSION LINE SERVED; AND
- THAT THE AGGRIEVED EMPLOYEE'S STATUS AND OTHER EMPLOYMENT BENEFITS HAVE NOT IN ANY WAY BEEN IMPAIRED,

I WOULD HAVE EXERCISED THE DISCRETION GIVEN THE BOARD UNDER THE PROVISIONS OF SECTION 65 (4) OF THE ACT AND REFUSED TO DIRECT THAT HE BE COMPENSATED BY THE COMMISSION FOR THE LOSS OF ONE DAY'S EARNINGS SUFFERED BY HIM.

15632-68-U: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 1687 (COMPLAINANT) v. EVOY-MCLEAN LIMITED (RESPONDENT).

BEFORE: H.D. BROWN, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND F.W. MURRAY.

APPEARANCES AT THE HEARING: A. MICHEL FOR THE COMPLAINANT AND M.N. ELLIES AND J. MCLEAN FOR THE RESPONDENT.

DECISION OF H.D. BROWN, VICE-CHAIRMAN, AND BOARD MEMBER
F.W. MURRAY: MAY 13, 1969.

1. THIS IS AN APPLICATION FOR RELIEF MADE PURSUANT TO THE PROVISIONS OF SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSONS WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50(A) AND (C) OF THE ACT IN THAT JIM MCLEAN, OWNER OF THE RESPONDENT, WRONGFULLY DISCHARGED TOM PERRIER, DON KOLYBABA AND HENRY DARLING, THREE OF ITS EMPLOYEES.

2. THE EVIDENCE ESTABLISHED THAT THE AGGRIEVED PERSONS WERE EMPLOYEES OF THE RESPONDENT WITH VARYING LENGTH OF SERVICE UP TO JANUARY 10TH, 1969, WHEN THEY WERE LAID OFF BY MR. MCLEAN. PRIOR TO THAT DATE THERE HAD BEEN A MEETING OF ALL EMPLOYEES OF THE RESPONDENT WITH MR. MCLEAN, BEING ONE OF REGULAR MONTHLY MEETINGS,

WHEN THEIR WORKING CONDITIONS WERE DISCUSSED. NO MENTION OF THE UNION WAS MADE AT THAT TIME. ON JANUARY 9TH, 1969 THE AGGRIEVED PERSONS AND TWO OTHERS MET WITH A REPRESENTATIVE OF THE UNION AND SIGNED APPLICATION FOR MEMBERSHIP CARDS IN THE UNION AND AUTHORIZED BILL SUTHERLAND, A FOREMAN, WHO WAS THEN PRESENT, TO ADVISE MR. MCLEAN THE FOLLOWING DAY THAT THEY (THE EMPLOYEES) HAD DECIDED "TO GO UNION". MR. MCLEAN TESTIFIED THAT SUTHERLAND TOLD HIM THAT THE EMPLOYEES HAD DECIDED TO JOIN THE UNION BUT DENIED THAT HE WAS TOLD WHO HAD IN FACT JOINED THE UNION. HE SAID HE MERELY TOLD SUTHERLAND THAT THIS WAS THEIR PREROGATIVE AND LEFT. THAT SAME DAY THE AGGRIEVED PERSONS WERE LAID OFF BECAUSE OF SEASONAL LACK OF WORK. SUBSEQUENTLY AN APPLICATION FOR CERTIFICATION WAS MADE TO THE BOARD.

3. THE BOARD HEARD EVIDENCE THAT THE RESPONDENT FOR THE LAST FEW YEARS HAD LAID OFF EMPLOYEES AT APPROXIMATELY THE SAME TIME OF THE YEAR DUE TO LACK OF WORK AND THAT TWO OF THE CONSTRUCTION JOBS IN PROGRESS IN JANUARY WERE MORE THAN 95% COMPLETE AND A THIRD APPEARED AT THAT TIME TO BE CLOSING DOWN FOR THE WINTER. THIS SUBSEQUENTLY TURNED OUT TO BE NOT THE CASE, BUT THAT WAS THE SITUATION FACING THE RESPONDENT IN JANUARY. THE WEEK FOLLOWING THE LAY-OFF MR. MCLEAN REQUESTED KOLYBABA TO RETURN TO WORK BUT HE REFUSED UNLESS THERE WAS A UNION SHOP. MCLEAN, THROUGH HIS SECRETARY AND FOREMAN, ALSO ATTEMPTED TO CONTACT PERRIER TO ASK HIM TO RETURN TO WORK BUT COULD NOT REACH HIM. MCLEAN HIRED A JOURNEYMAN ELECTRICIAN FOR A PERSONAL JOB AND ANOTHER PERSON, R. WOODCOCK, WAS HIRED BY THE RESPONDENT LATER THAT MONTH. HE SAID A JOURNEYMAN IS DIFFICULT TO OBTAIN AND HE REQUIRED SUCH A PERSON FOR A SHORT TIME. THE AGGRIEVED PERSONS WERE NOT QUALIFIED ELECTRICIANS. NONE OF THE AGGRIEVED INQUIRED OF MCLEAN IF THERE WAS ANY OPPORTUNITY TO RETURN TO THEIR FORMER WORK. PERRIER ADMITTED THAT AT THE TIME OF THE LAY-OFF HE WAS CONTENT THAT IT WAS CAUSED BY A SEASONAL LACK OF WORK.

4. THE COMPLAINANT, TO BE SUCCESSFUL, MUST ESTABLISH THAT THE RESPONDENT ACTED CONTRARY TO THE ACT IN THE MANNER ALLEGED. THAT THE BOARD CANNOT MAKE A DETERMINATION ON MERE SUSPICION OF WRONG DOING HAS BEEN HELD IN MANY OF ITS PREVIOUS DECISIONS. THERE MUST BE SUBSTANTIAL, CREDIBLE EVIDENCE GIVEN IN SUPPORT OF THE COMPLAINANT'S POSITION. THERE IS NO EVIDENCE WHATSOEVER IN THIS MATTER THAT MR. MCLEAN WAS AWARE AT THE TIME OF THE LAY-OFF THAT THE AGGRIEVED PERSONS WERE MEMBERS OF THE UNION AND WE HAVE IN THIS REGARD HIS UNCONTRADICTED STATEMENT OF THE CONVERSATION BETWEEN HIM AND SUTHERLAND. IT IS ALSO OF SIGNIFICANCE TO NOTE THAT HE SUBSEQUENTLY ASKED KOLYBABA TO RETURN TO WORK AND SOUGHT OUT PERRIER TO REQUEST HIM TO RETURN AS WELL. THE PERSON THAT WAS HIRED ON JANUARY 20TH WAS A UNION MEMBER. ALL OF WHICH DOES NOT SUPPORT THE UNION'S CONTENTION THAT THE RESPONDENT ACTED IMPROPERLY IN LAYING OFF THE AGGRIEVED PERSONS. ON THE CONTRARY, WE ARE SATISFIED THAT MR. MCLEAN HAD GOOD

AND SUFFICIENT REASONS FOR THE LAY-OFF AT THE TIME AND WE FIND NO EVIDENCE THAT HE ACTED CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT, AS ALLEGED BY THE APPLICANT.

5. ACCORDINGLY, ON ALL THE EVIDENCE WE FIND THAT THE COMPLAINANT ON THE BALANCE OF PROBABILITIES HAS NOT SATISFIED THE ONUS ON IT TO ESTABLISH THAT THE RESPONDENT IN DEALING WITH THE AGGRIEVED PERSONS CONTRAVENED SECTION 50(A) OR (C) OF THE ACT AND THE COMPLAINT IS DISMISSED.

DISSENT OF BOARD MEMBER O. HODGES: MAY 13, 1969.

I DISSENT. I WOULD HAVE FOUND THAT THE EMPLOYEES WERE DISCHARGED FOR UNION ACTIVITY AND THEREFORE BE ENTITLED TO REINSTATEMENT WITH COMPENSATION.

15780-68-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (COMPLAINANT) v. ESAM CONSTRUCTION LTD. (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: AARON BROWN, THOMAS HARKNESS AND ALFONS CRECES FOR THE COMPLAINANT; H.S. TAGGART, Q.C. FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER H.F. IRWIN: MAY 30, 1969.

1. THIS IS A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT ALLEGES THAT JAMES BROWN, LAWRENCE PSAILA, VICTOR RODRIGUES AND MANUEL CAETANO HAVE BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50(A)(C) OF THE LABOUR RELATIONS ACT. THE COMPLAINANT SEEKS THE REINSTATEMENT OF THE FOUR AGGRIEVED WITH REIMBURSEMENT FOR WAGES LOST. THE EVIDENCE ESTABLISHES THAT THE FOUR AGGRIEVED HAD BEEN EMPLOYED AS CARPENTERS FOR VARYING PERIODS PRIOR TO THEIR SEPARATION.

2. ON THURSDAY, FEBRUARY 27, 1969, AT THE CONCLUSION OF THEIR SHIFT, THE FOUR AGGRIEVED WERE ADVISED BY HANS SCHEIB, THE GENERAL SUPERINTENDENT FOR THE RESPONDENT, THAT THEY WERE BEING LAID-OFF. ON THE SAME DATE, THERE WERE FIVE ADDITIONAL EMPLOYEES LAID-OFF, NONE OF WHOM WERE MEMBERS OF THE COMPLAINANT UNION. THURSDAY WAS THE NORMAL PAY DAY AND ALL "LAID-OFF" EMPLOYEES WERE GIVEN THEIR REGULAR PAY, THEIR VACATION BOOKS AND OTHER DOCUMENTS.

3. THE FOUR AGGRIEVED EMPLOYEES WERE OF THE OPINION THAT THERE WAS WORK AVAILABLE FOR THEM ON THE SITE AND THAT THEIR LAY-OFF WAS NOT NECESSARY. THEIR CONTENTION AND THAT OF THE COMPLAINANT IS THAT THE TRUE REASON FOR THE LAY-OFF WAS THE FACT THAT THEY HAD JOINED THE COMPLAINANT UNION.

4. THE RESPONDENT'S POSITION WAS THAT IT WAS NECESSARY TO LAY-OFF THE AGGRIEVED AND OTHER EMPLOYEES, DUE TO THE COMPLETION OF ONE OF TWO BUILDINGS ON THE SAME SITE AND THE FACT THAT A STOP WORK ORDER WAS ISSUED BY THE CITY OF LONDON WITH RESPECT TO THE OTHER BUILDING. THE BUILDING AGAINST WHICH THE STOP WORK ORDER WAS ISSUED IS A SMALLER BUILDING THAN THE ONE THAT WAS BEING COMPLETED, SO THAT THE TOTAL COMPLEMENT OF EMPLOYEES COULD NOT BE EMPLOYED ON THE SMALL BUILDING IN ANY EVENT.

5. THE STOP WORK ORDER IS DATED FEBRUARY 19, 1969 AND DIRECTS THE CESSION OF THE WORK PENDING THE ISSUANCE OF A BUILDING PERMIT UNDER THE MUNICIPAL BY-LAWS. THERE IS NO DISPUTE THAT THIS ORDER HAD REFERENCE TO THE SMALLER OF THE TWO BUILDINGS WHICH WAS AT THE TIME IN THE EARLY STAGES OF CONSTRUCTION.

6. A BUILDING PERMIT WAS ISSUED TO THE RESPONDENT ON THE 12TH OF MARCH, 1969 AND WORK ON THE BUILDING WAS RECOMMENCED. ON THE 8TH OF APRIL, ALL OF THE AGGRIEVED, EXCEPT BROWN, WERE REQUESTED BY THE RESPONDENT TO RETURN TO WORK ON THE 11TH OF APRIL, 1969. PSAILA AND CAETANO COMMENCED TO WORK FOR THE RESPONDENT ON THE 11TH OF APRIL. RODRIGUES, WHO, THROUGH NO FAULT OF THE RESPONDENT, HAD NOT RECEIVED HIS NOTICE UNTIL LATER, REPORTED FOR WORK AFTER APRIL THE 11TH AND WAS ADVISED THAT HE WAS TOO LATE, BUT THAT HE WOULD BE CALLED THE NEXT TIME THEY NEEDED SOME MEN. BROWN HAS NOT BEEN RE-CALLED BY THE RESPONDENT.

7. MR. ALFONS CRECES, THE UNION ORGANIZER, TESTIFIED THAT CACTANO JOINED THE UNION ON FEBRUARY THE 4TH, BROWN ON FEBRUARY THE 5TH, RODRIGUES AND PSAILA ON FEBRUARY THE 6TH, 1969. HE ALSO TESTIFIED THAT FOUR OTHER EMPLOYEES OF THE RESPONDENT JOINED THE UNION PRIOR TO FEBRUARY 27TH, 1969. IT WOULD APPEAR, THEREFORE, THAT AT THE TIME OF THE LAY-OFF THERE WERE EIGHT EMPLOYEES WHO WERE MEMBERS OF THE UNION INCLUDING THE FOUR AGGRIEVED. THIS MEANS, OF COURSE, THAT FOUR UNION MEMBERS WERE NOT LAID-OFF, BUT CONTINUED ON THE JOB.

8. JAMES BROWN TESTIFIED THAT HE HAD BEEN EMPLOYED BY THE RESPONDENT AS A CARPENTER FOR TWO YEARS PRIOR TO THE LAY-OFF. HE HAD BEEN PROMOTED TO ASISTANT FOREMAN AT THE END OF HIS FIRST YEAR. IN DECEMBER OF 1968, HE WAS APPOINTED FOREMAN, BUT CONTINUED TO DO CARPENTRY WORK. BROWN RELATED TO THE BOARD A CONVERSATION HE HAD HAD WITH SAM KATZ, PRESIDENT OF THE COMPANY, SOMETIME AFTER HE HAD JOINED THE UNION. HE STATED THAT KATZ ASKED HIM IF THE UNION HAD BEEN IN TOUCH WITH HIM AND IF THERE HAD BEEN ANY UNION ACTIVITY. BROWN REPLIED IN THE NEGATIVE. HE SAID THAT KATZ WENT ON TO SAY THAT HE WOULD FIND IT IMPOSSIBLE TO COMPETE IN THE APARTMENT CONSTRUCTION BUSINESS IF HE WERE REQUIRED TO PAY UNION RATES. HE SAID THAT IF IT CAME TO THAT, HE WOULD HAVE TO LEVEL THE SITE WITH A BULLDOZER.

9. KATZ ALSO TESTIFIED BEFORE THE BOARD AND CONFIRMED BROWN'S ACCOUNT OF THE CONVERSATION. HE STATED THAT HE WAS UNAWARE OF THE UNION ACTIVITY ON THE SITE, BUT THAT THERE WAS ALWAYS TALK GOING AROUND ABOUT RATES AND ABOUT UNIONS IN THE APARTMENT BUSINESS. HE STATED THAT HE HAD NOTHING TO DO WITH WHO WAS LAID-OFF AND THAT THE MATTER WAS LEFT ENTIRELY IN THE HANDS OF SCHEIB. IT WOULD SEEM THAT KATZ ACCEPTED BROWN'S ASSURANCES WITH RESPECT TO THE UNION AND THIS, PLUS THE FACT THAT BROWN WAS A FOREMAN, NO DOUBT ENCOURAGED HIM TO EXPRESS HIS FEARS AS TO THE ECONOMIC CONSEQUENCES TO UNIONIZATION WITH WHICH, INCIDENTALLY, BROWN AGREED.

10. BROWN ALSO STATED THAT SCHEIB TOLD HIM WHEN HE LAID THEM OFF THAT HE WAS SORRY THAT THERE WAS NO WORK AVAILABLE FOR THEM. HE STATED THAT ON THE DAY HE WAS LAID-OFF, HE HAD BEEN WORKING ON THE NEW BUILDING WITH TWO LABOURERS AND THAT ALL THREE OF THEM WERE LAID-OFF ON FEBRUARY 27TH. THIS IS THE BUILDING TO WHICH STOP WORK ORDER WAS DIRECTED. BROWN VISITED THE JOB SITE SEVERAL TIMES AFTER THE 27TH OF FEBRUARY. ON ONE OCCASION HE STATED THAT HE SPOKE TO BEERBAUM, WHOM HE IDENTIFIED AS AN OFFICER OF THE COMPANY. HE ASKED BEERBAUM AND SCHEIB, WHO WAS ALSO THERE, WHEN THEY WERE GOING TO HIRE BACK AGAIN AND WAS TOLD THAT THEY WOULD HAVE TO WAIT TO SEE WHAT WOULD HAPPEN. IT WOULD APPEAR THAT THIS HAD REFERENCE TO THE LIFTING OF THE STOP WORK ORDER. BROWN SAID THAT HE HAD SPOKEN TO BEERBAUM ABOUT THE ORDER SOMETIME BEFORE THE LAY-OFF AND THAT HE WAS TOLD NOT TO WORRY SINCE THE OTHER BUILDING WAS NOT COMPLETED AND THAT THERE WOULD BE SOME WORK. HE ALSO SAID THAT ON ONE OCCASION, SCHEIB TOLD HIM HE WOULD TAKE HIM BACK IF IT WAS O.K. WITH BEERBAUM. HE THEN WENT TO SEE BEERBAUM AND KATZ AND ASKED WHY HE WAS FIRED. HE SAID HE WAS TOLD BY BEERBAUM HIS WORK WAS A HUNDRED PER CENT, BUT THAT HE WAS SORRY THEY COULD NOT TAKE HIM BACK. HE SAID THAT KATZ OFFERED TO GIVE HIM A REFERENCE AND THEN WENT ON TO SAY THAT HE WAS SORRY THAT THINGS HAD TURNED OUT THE WAY THEY HAD, BUT THAT SOMEONE HAD "STABBED HIM IN THE BACK". KATZ TESTIFIED THAT THIS REMARK HAD REFERENCE TO THE FACT THAT SOMEONE HAD REPORTED TO CITY HALL THAT HE HAD NO WORK PERMIT FOR THE NEW BUILDING.

11. BROWN SAID THAT THERE HAD NEVER BEEN ANY COMPLAINANTS ABOUT HIS WORKMANSHIP. HE ADMITTED, HOWEVER, THAT HE HAD HAD PROBLEMS WITH RESPECT TO THE LAYOUT OF STEEL. IN ADDITION, HE HAD BEEN RESPONSIBLE FOR THE PLACING OF A CONCRETE COLUMN IN THE WRONG PLACE. THIS HAD TO BE BROKEN DOWN AND REMOVED. ON ANOTHER OCCASION, HE HAD MADE A MISTAKE WITH RESPECT TO CERTAIN FOOTINGS WITH A RESULT THAT ADDITIONAL WORK WAS REQUIRED IN REMOVING THEM IN RECTIFYING THE ERROR. THIS WAS WORK FALLING UNDER HIS JURISDICTION AS FOREMAN AND OCCURRED IN THE PERIOD BETWEEN DECEMBER 1968 AND THE TIME OF THE LAY-OFF.

12. IN HIS TESTIMONY, THE AGGRIEVED PSAILA SAID THAT HE HAD BEEN WORKING IN THE CARPENTRY SHOP AT THE TIME OF THIS TERMINATION. HE STATED THAT HANS SCHEIB GAVE NO EXPLANATION FOR THE LAY-OFF, BUT THAT HE INQUIRED OF MR. BEERBAUM AS TO THE REASON WHY HE HAD BEEN TERMINATED, AND WAS TOLD BY HIM TO WAIT FOR A COUPLE OF WEEKS BECAUSE THERE WAS NO WORK PERMIT FOR THE BUILDING. HE ALSO TESTIFIED THAT HE RODE BACK AND FORTH TO WORK WITH ONE OF THE SUPERINTENDENTS NAMED BERESFORD. HE SAID THAT WHEN BERESFORD SAW HIM WITH HIS PAY BOOK ON FEBRUARY 27TH, HE TOLD HIM THAT HE COULD LOOK TO THE UNION TO GET HIM ANOTHER JOB. IN HIS EVIDENCE IN CHIEF, HE SAID HE DID NOT KNOW HOW BERESFORD KNEW HE HAD HAD ANYTHING TO DO WITH THE UNION. IN HIS CROSS-EXAMINATION, HOWEVER, HE SAID THAT BERESFORD HAD ASKED HIM IF HE HAD BEEN APPROACHED BY THE UNION. HE DID NOT SAY WHEN THIS QUESTION HAD BEEN PUT TO HIM OR THE CIRCUMSTANCES UNDER WHICH IT WAS ASKED, NOR DO WE KNOW IF THIS INFORMATION WENT BEYOND BERESFORD. HE SAID THAT HE CAME BACK TO THE WORK SITE AFTER HE HAD BEEN LAID-OFF AND ASKED SCHEIB WHY HE HAD BEEN TERMINATED. HE SAID THAT SCHEIB SIMPLY SMILED AND SAID "YOU KNOW WHY" AND THAT HE WOULD NEVER HAVE PSAILA BACK. PSAILA TESTIFIED THAT THERE WAS STILL WORK TO BE DONE IN THE CARPENTRY SHOP AFTER HE WAS LAID-OFF.

13. IN HIS EVIDENCE, CRECES STATED THAT SOMETIME AFTER THE LAY-OFF ON FEBRUARY 27TH, HE AND THOMAS HARKNESS CALLED ON SCHEIB AT THE LATTER'S HOME. THE PURPOSE OF THE CALL WAS TO FIND OUT FROM SCHEIB WHY THE AGGRIEVED HAD BEEN LAID-OFF. CRECES SAID THAT THEY WENT TO SCHEIB BECAUSE HE HAD ON A PREVIOUS OCCASION INDICATED AN INTEREST IN JOINING THE UNION. APPARENTLY, CRECES AND HARKNESS FELT THAT SCHEIB WOULD THEREFORE, BE COOPERATIVE. THE EVIDENCE IS THAT THE MEETING LASTED FOR SOME TWO HOURS, DURING WHICH THE UNION AND THE LAY-OFF WERE DISCUSSED. CRECES SAID, THEY INQUIRED PARTICULARLY ABOUT BROWN BECAUSE THEY FELT HE WAS A GOOD CARPENTER. THE RESPONSE THEY GOT FROM SCHEIB, HOWEVER, WAS THAT HE TOLD THEM THAT HE HAD LAID THE MEN OFF BECAUSE OF THE LACK OF WORK. INSO FAR AS BROWN WAS CONCERNED, CRECES SAID THAT SCHEIB TOLD THEM THAT HE CONSIDERED BROWN TO BE ONE OF HIS BEST MEN AND THAT HE WOULD RECALL HIM IF HE COULD.

14. IT IS QUITE CLEAR FROM THE EVIDENCE THAT THE CHIEF MANAGERIAL RESPONSIBILITY FOR THE HIRING AND FIRING OF THE WORK CREWS BELONGS TO HANS SCHEIB. HE TESTIFIED THAT THE LAY-OFF WAS DUE TO THE STOP WORK ORDER AND THE FACT THAT THE LARGER OF THE TWO BUILDINGS ON THE SITE WAS VIRTUALLY COMPLETED. HE SAID THAT HE KEPT THE FULL CREW WORKING FOR A FEW DAYS CLEANING UP AROUND THE NEW BUILDING, NOTWITHSTANDING THE STOP WORK ORDER. WHEN HE SAW THAT WORK WAS RUNNING OUT, HE LAID-OFF EIGHT EMPLOYEES ON FEBRUARY 27TH. HE SAID THAT HE WAS NOT AWARE THAT ANY OF THE LAID-OFF EMPLOYEES HAD JOINED THE UNION, NOR WAS HE AWARE OF ANY UNION ACTIVITY ON THEIR PART AND THAT HE HAD JUST PICKED THE MEN WHO HAD RUN OUT OF WORK AND LAID THEM OFF. HE SAID THAT THERE WAS SOME WORK LEFT IN THE CARPENTRY SHOP WHERE PSAILA WAS WORKING, BUT THAT HE WANTED TO

RESERVE THAT WORK FOR EMPLOYEES REMAINING ON THE JOB WHO MIGHT NOT BE ABLE TO WORK OUTSIDE IN BAD WEATHER. IT WILL BE RECOLLECTED THAT PSAILA TESTIFIED THAT THERE WAS WORK AVAILABLE IN THE CARPENTRY SHOP AT THE TIME OF HIS LAY-OFF. THE FOREGOING WAS SCHEIB'S EXPLANATION OF THAT SITUATION. THE EVIDENCE WAS THAT THE WORK IN THE CARPENTRY SHOP WAS IN FACT COMPLETED DURING INCLEMENT WEATHER BY EMPLOYEES WHO HAD NOT BEEN LAID-OFF.

15. QUESTIONS WERE DIRECTED TO SCHEIB WITH RESPECT TO THE LAY-OFF OF BROWN AND TO HIS WORK HISTORY. HE SAID THAT BROWN HAD ALWAYS BEEN ANXIOUS TO BE APPOINTED FOREMAN AND HAD SPOKEN TO HIM SEVERAL TIMES REQUESTING PROMOTION. IN DECEMBER 1968, HE APPOINTED BROWN FOREMAN. SCHEIB SAID THAT IT TURNED OUT THAT BROWN WAS NOT ABLE TO HANDLE THE JOB OF FOREMAN. HE SAID THAT HE HAD HAD COMPLAINTS ABOUT BROWN'S BAD LANGUAGE ON THE JOB AND THAT HE HAD SHOWN HE WAS NOT ABLE TO HANDLE MEN. HE BASED THE LATTER OPINION ON THE FACT THAT BROWN HAD DISCHARGED A LABOURER WHOM SCHEIB CONSIDERED TO BE A GOOD EMPLOYEE AND WHO SHOULD NOT HAVE BEEN DISCHARGED. IN FURTHER SUPPORT OF HIS OPINION AS TO BROWN'S INABILITY TO FULFIL THE JOB OF FOREMAN, HE MENTIONED THE MATTERS REFERRED TO IN BROWN'S OWN TESTIMONY REVIEWED EARLIER IN THIS DECISION.

16. WILLIAM HASS, A DESIGN ENGINEER, STATED THAT HE HAD SUPERVISORY DIRECTION OVER BROWN IN THE LATTER'S CAPACITY AS FOREMAN. HE CONFIRMED THE EVIDENCE OF SCHEIB AND BROWN WITH RESPECT TO THE MISTAKES MADE BY BROWN. HE SAID THAT IF BROWN WERE TO CONTINUE IN THIS MANNER, IT WOULD MEAN ALMOST CONSTANT ATTENDANCE ON THE SITE ON HIS PART, IN ORDER TO FORESTALL ANY FURTHER MISTAKES. HE SAID THAT ALTHOUGH BROWN HAD NOT BEEN WARNED THAT HE MIGHT BE DISCHARGED FOR INEFFICIENCY, HIS MISTAKES HAD BEEN DRAWN TO HIS ATTENTION AND TO THOSE OF MANAGEMENT. HE FELT THAT BROWN'S RECORD WAS BUILDING UP TO THE POINT WHERE HE WAS IN DANGER OF BEING DISCHARGED.

17. SCHEIB'S TESTIMONY WAS THAT HE FELT THAT IF HE RECALLED BROWN, HE WOULD HAVE BEEN OBLIGED TO RE-EMPLOY HIM AS A FOREMAN OR TO DEMOTE HIM. HE DID NOT WISH TO HAVE TO CHOOSE EITHER ALTERNATIVE AND, THEREFORE, ELECTED NOT TO RECALL BROWN AT ALL. UNDER CROSS-EXAMINATION, HE REPEATED THAT HE FOUND BROWN TO BE UNSATISFACTORY AS A FOREMAN. HE THEN ADDED THAT HE NOW THOUGHT HE COULDN'T HAVE BEEN A VERY GOOD CARPENTER BECAUSE IF HE HAD BEEN, HE WOULD NOT HAVE MADE THE MISTAKES WITH RESPECT TO THE BLUE PRINTS AND CONCRETE PORINGS. THERE APPEARS TO BE A DISCREPANCY BETWEEN THAT TESTIMONY AND THAT OF CRECES AS WHAT SCHEIB SAID WITH RESPECT TO BROWN'S CAPABILITIES DURING THE INTERVIEW BETWEEN HARKNESS, CRECES AND SCHEIB. IT WAS NOT MADE CLEAR, HOWEVER, AS TO WHETHER SCHEIB'S REMARKS AT THE DISCUSSION WERE DIRECTED TOWARDS BROWN'S CAPABILITY AS A CARPENTER OR AS A FOREMAN. IN ANY EVENT, IN HIS

TESTIMONY BEFORE THE BOARD, SCHEIB DID NOT DENIGRATE BROWN'S CAPABILITIES AS A CARPENTER IN ANY WAY UNTIL INVITED TO DO SO THROUGH CROSS-EXAMINATION. HIS TESTIMONY, IN HIS EVIDENCE IN CHIEF, WAS DIRECTED SOLELY TO BROWN'S FAILURE AS A FOREMAN.

18. THERE CAN BE NO DOUBT THAT THE COMPLETION OF ONE OF THE BUILDINGS ON THE SITE WITH WHICH WE ARE HERE CONCERNED AND THE SHUT-DOWN OF WORK ON THE OTHER BUILDING, DUE TO THE STOP WORK ORDER, WOULD NATURALLY RESULT IN A REDUNDANCY OF EMPLOYEES, NECESSITATING A LAY-OFF. THIS STATE OF AFFAIRS RESULTED IN THE LAY-OFF OF SOME MEN WHO WERE MEMBERS OF THE UNION AND SOME WHO WERE NOT. IT ALSO BROUGHT ABOUT CIRCUMSTANCES IN WHICH SOME OF THE EMPLOYEES WHO WERE RETAINED ON THE JOB WERE UNION MEMBERS, WHILE OTHERS WERE NOT. IT SHOULD BE NOTED THAT THE AGGRIEVED, EXCEPT PSAILA, WERE ALL WORKING ON THE NEW BUILDING UPON WHICH THE STOP WORK ORDER WAS PLACED. IT APPEARS TO US THAT THEY WOULD BE THE OBVIOUS EMPLOYEES TO BE LAID-OFF. THERE IS NO EVIDENCE OF ANY PARTICULAR UNION ACTIVITY ON THE PART OF ANY ONE OF THE UNION MEMBERS WHO WERE LAID-OFF WHICH MIGHT HAVE DISTINGUISHED THEM FROM THOSE UNION MEMBERS WHO WERE NOT LAID-OFF, OR INDEED MIGHT HAVE CAUSED SCHEIB OR ANY ONE TO BELIEVE THAT THEY WERE MEMBERS OF THE UNION AT ALL, WITH THE POSSIBLE EXCEPTION OF PSAILA.

19. IN VIEW OF THE FOREGOING AND IN THE LIGHT OF ALL THE EVIDENCE AND EVEN ASSUMING THAT THE RESPONDENT WAS AWARE OF THE ORGANIZING ACTIVITIES OF THE UNION, WE ARE NOT SATISFIED THAT THE COMPLAINANT HAS DISCHARGED THE ONU'S UPON IT TO ESTABLISH THAT THE AGGRIEVED WERE DEALT WITH CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT. THE COMPLAINT IS ACCORDINGLY DISMISSED.

20. IN CONSEQUENCE OF THE DISMISSAL OF THE COMPLAINT, IT IS UNNECESSARY FOR THE BOARD TO INVITE EVIDENCE OR REPRESENTATIONS RAISED AT THE HEARING, HAVING TO DO WITH THE STATUS OF JAMES BROWN AS AN EMPLOYEE WITHIN THE MEANING OF THE LABOUR RELATIONS ACT.

DECISION OF BOARD MEMBER O. HODGES: MAY 30, 1969.

1. I DISSENT.

2. THE TESTIMONY OF JAMES BROWN CONCERNING CONVERSATIONS WITH COMPANY PRESIDENT, SAM KATZ, A COMPANY OFFICER, MR. BEERBAUM AND WITH COMPANY FOREMAN, HANS SCHEIB, IS STRONG ENOUGH TO DRAW THE INFERENCE THAT MANAGEMENT HAD SINGLED OUT BROWN AS THE KEY FIGURE IN THE UNION ORGANIZING CAMPAIGN. BROWN'S DENIAL OF UNION ACTIVITY ON HIS PART, MADE TO MR. KATZ WHEN QUESTIONED BY KATZ, WAS A NATURAL RESPONSE AND CANNOT BE HELD AGAINST BROWN.

3. IT WAS FOR SUSPICION OF UNION LEADERSHIP ACTIVITY THAT BROWN WAS LAID-OFF AND NOT REHIRED, IN FACT TERMINATED, ACCORDING TO MY HEARING OF ALL THE TESTIMONY.
4. BROWN COULD NOT FIND OUT WHY HE WAS "LAID-OFF" FROM FOREMAN HANS SCHEIB. "YOU KNOW WHY" WAS THE ANSWER HE WAS GIVEN AND IT IS NOT AN ANSWER ONE WOULD EXPECT IF AN HONEST ANSWER COULD BE GIVEN.
5. BROWN IS A GOOD CARPENTER ACCORDING TO ALL THE TESTIMONY. AS A NEWLY APPOINTED WORKING FOREMAN, HE MADE ERRORS THAT CERTAINLY OUGHT TO HAVE BEEN CAUGHT BY SUPERVISION. IN ANY CASE, THE ERRORS COMPLAINED OF AT THE HEARING OCCURRED SOMETIME BEFORE THE "LAY-OFF", AND BROWN WAS NOT DEMOTED.
6. THE BUILDING PERMIT PLOY MAY BE ARGUED TO JUSTIFY THE LAY-OFF AND RETURN TO WORK OF THE OTHER EMPLOYEES, BUT NOT OF BROWN. THERE IS NO JUSTIFICATION FOR FAILURE TO RE-HIRE BROWN AS A CARPENTER.
7. CONCERNING THE GRIEVORS OTHER THAN BROWN, I AGREE WITH THE MAJORITY DECISION.
8. I FIND THAT JAMES BROWN WAS TERMINATED FOR UNION ACTIVITY AND THAT HE BE REINSTATED AS A CARPENTER WITH FULL COMPENSATION FOR LOSS OF EARNINGS BASED ON THE SCALE PAID OTHER CARPENTERS ON THE JOB.

15817-68-U: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL, CIO, CLC (COMPLAINANT) v. CANADYLET CLOSURES DIVISION OF INTERNATIONAL SILVER COMPANY OF CANADA LIMITED (RESPONDENT).

BEFORE: J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS P.J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: B. CHERCOVER AND L. COLLINS FOR THE COMPLAINANT, G.W. HATELY FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 22, 1969.

• • •

2. THIS IS A COMPLAINT FOR RELIEF UNDER THE PROVISIONS OF SECTION 65 OF THE LABOUR RELATIONS ACT.

3. THE COMPLAINANT ALLEGED THAT GERRARD BRENNAN, SUSAN DUNCAN, SHIRLEY ASHMAN, TONI GONDOR AND MARIE KOSTAL WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50 AND 52 OF THE LABOUR RELATIONS ACT IN THAT THEY WERE DISCHARGED FOR UNION ACTIVITY ON OR ABOUT FEBRUARY 27TH, 1969.

4. BY ITS DECISION DATED APRIL 2ND, 1969 IN THIS MATTER, THE BOARD STATED IN PART THAT, "THE COMPLAINT IN SO FAR AS IT RELATES TO MISS TONI GONDOR IS DISMISSED SINCE SHE DID NOT APPEAR BEFORE THE FIELD OFFICER, MR. J.M. FLANNERY." APPARENTLY, TONI GONDOR WAS REINSTATED BY THE RESPONDENT ON OR ABOUT APRIL 7TH, 1969.

5. THE EVIDENCE DISCLOSED THAT THE COMPLAINANT HAD COMMENCED ITS CAMPAIGN TO ORGANIZE THE RESPONDENT'S EMPLOYEES ON OR ABOUT FEBRUARY 18TH, 1969. THE COMPANY ACKNOWLEDGED THAT IT HEARD OF THE COMPLAINANT'S CAMPAIGN SHORTLY AFTER IT COMMENCED. INDEED, BY LETTER DATED FEBRUARY 18TH, 1969, THE RESPONDENT'S GENERAL MANAGER WROTE TO THE EMPLOYEES EXPRESSING THE COMPANY'S VIEWS ON THE APPLICANT'S ORGANIZING CAMPAIGN.

6. ON FRIDAY, FEBRUARY 21ST, 1969, GERRARD BRENNAN, ONE OF THE AGGRIEVED PERSONS, AND NEIL IRVINE, ANOTHER EMPLOYEE, WERE SPOKEN TO BY THE COMPANY'S SUPERINTENDENT AND WERE WARNED THAT THEY WERE NOT TO SOLICIT UNION MEMBERSHIP ON COMPANY PREMISES DURING WORKING HOURS. APPARENTLY, THE SUPERINTENDENT ADVISED THEM THAT IF THEY CONTINUED THE PRACTICE THEY WOULD BE DISCHARGED AND THAT IF THEY WANTED TO SOLICIT MEMBERSHIP THEY WERE TO DO IT OUTSIDE OF WORKING HOURS. NO MEMBER OF MANAGEMENT SPOKE TO EITHER MR. BRENNAN OR MR. IRVINE ABOUT SOLICITATION AFTER THAT DATE AND THE EVIDENCE WAS THAT THEY PUT A STOP TO THEIR SOLICITATION AFTER THEY WERE SPOKEN TO.

7. ON FEBRUARY 27TH, 1969, THE FIVE AGGRIEVED PERSONS AND A SIXTH EMPLOYEE WERE LAID OFF.

8. THE EVIDENCE FURTHER DISCLOSED THAT THE COMPANY HAD OPERATED FOUR METALIZING SPRAY MACHINES IN SEPTEMBER, 1968 AND THAT BECAUSE OF PRODUCTION PROBLEMS ONE OF THE SPRAY MACHINES WAS CLOSED DOWN APPROXIMATELY THE 1ST OF NOVEMBER, 1968, AND EMPLOYEES WERE LAID OFF. APPARENTLY, THE PRODUCTION PROBLEMS CONTINUED AND A FURTHER CUT-BACK WAS NECESSARY IN FEBRUARY 1969, AT WHICH TIME A SECOND SPRAY MACHINE WAS SHUT DOWN AND FURTHER LAY-OFFS WERE REQUIRED.

9. IT WAS THE COMPANY'S POSITION THAT AS A RESULT OF PRODUCTION DIFFICULTIES THE SIX PERSONS REFERRED TO ABOVE WERE LAID OFF. GERRARD BRENNAN HAD BEEN EMPLOYED AS A STOCKKEEPER AND AT THE TIME HE WAS LAID OFF HIS JOB WAS TURNED OVER TO A MACHINE OPERATOR. THE COMPANY TOOK THE POSITION THAT SINCE MR. BRENNAN WAS THE JUNIOR MAN IN HIS DEPARTMENT AND SINCE A STOCKKEEPER WAS

MORE EASILY TRAINED THAN A MACHINE OPERATOR, THE COMPANY CHOSE TO TRANSFER THE MACHINE OPERATOR TO MR. BRENNAN'S JOB AND TO LAY OFF MR. BRENNAN. THE SIXTH EMPLOYEE WHO WAS LAID OFF WAS A PROBATIONARY EMPLOYEE WHO WAS INVOLVED IN AN AUTOMOBILE ACCIDENT AND WAS STILL OFF WORK ON FEBRUARY 27TH. THIS SIXTH EMPLOYEE WAS INCLUDED AMONG THOSE TO BE LAID OFF. SUSAN DUNCAN, SHIRLEY ASHMAN AND MARIE KOSTAL WERE LAID OFF AFTER DISCUSSION BETWEEN THE SUPERINTENDENT AND THEIR FOREMAN. WHILE THE ACTUAL CHOICES OF THE PERSONS TO BE LAID OFF WERE MADE BY THE FOREMAN, THE REASON FOR CHOOSING THE PERSONS TO BE LAID OFF WAS THAT THE FOREMAN CHOSE WHAT HE CONSIDERED TO BE THE WEAKEST LINKS IN HIS DEPARTMENT. WHILE THERE WERE NO SPECIFIC COMPLAINTS ABOUT THE PERFORMANCE OF THE PERSONS LAID OFF IT WAS THE COMPANY'S POSITION THAT THESE PERSONS, WHILE SATISFACTORY, WERE NOT AS PROFICIENT AS OTHER EMPLOYEES WHO WERE RETAINED. THE COMPANY ACKNOWLEDGED THAT IN ARRIVING AT ITS DECISION AS TO WHO SHOULD BE LAID OFF, SENIORITY WAS NOT A FACTOR CONSIDERED. IT IS NOT WITHOUT INTEREST TO NOTE THAT ALL OF THE FOUR AGGRIEVED PERSONS WITH WHOM WE ARE HERE CONCERNED WERE RECALLED TO WORK AT VARIOUS DATES AS REQUIRED.

10. THE EVIDENCE FURTHER DISCLOSED THAT MARIE KOSTAL HAD NOT JOINED THE COMPLAINANT UNION AND HAD NOT SOLICITED MEMBERSHIP ON BEHALF OF THE UNION. WHILE SHIRLEY ASHMAN HAD JOINED THE UNION SHE HAD NOT ENGAGED IN ANY ACTIVITY ON THE COMPANY'S PREMISES IN SUPPORT OF THE UNION AND SHE DID NOT BELIEVE THAT THE COMPANY WAS AWARE OF THE FACT THAT SHE WAS A UNION MEMBER. SUSAN DUNCAN HAD JOINED THE UNION AND THE EVIDENCE DISCLOSED THAT SHE HAD DISCUSSED THE UNION WITH OTHER GIRLS WHILE WORKING. WHILE THE EVIDENCE DISCLOSED THAT MRS. DUNCAN'S FOREMAN HAD "GIBED" HER ABOUT THE UNION THERE WAS NO EVIDENCE THAT HE HAD THREATENED HER IN ANY WAY. THE FOREMAN CONCERNED IS NO LONGER WITH THE COMPANY AND DID NOT TESTIFY AT THE HEARING IN THIS MATTER.

11. THE NUMBER OF EMPLOYEES IN THE DEPARTMENT IN WHICH THE AGGRIEVED PERSONS WERE EMPLOYED HAS BEEN CONTINUALLY REDUCED SINCE SEPTEMBER 1968. IN SEPTEMBER 1968, THERE WERE 52 EMPLOYEES IN THAT DEPARTMENT. AFTER THE FIRST SPRAY MACHINE WAS SHUT DOWN IN NOVEMBER THE NUMBER OF EMPLOYEES WAS REDUCED TO 40. WHEN THE LAY-OFF OCCURRED WITH WHICH WE ARE HERE CONCERNED IN FEBRUARY FOLLOWING THE SHUTDOWN OF THE SECOND MACHINE, THE NUMBER OF EMPLOYEES WAS FURTHER REDUCED TO 31. AS OF MAY 1ST, THE HEARING DATE IN THIS MATTER, THERE WERE 29 EMPLOYEES EMPLOYED IN THAT DEPARTMENT.

12. IT WAS THE COMPLAINANT'S SUBMISSION THAT IT WAS A NECESSARY INFERENCE FROM THE FACTS OUTLINED ABOVE THAT THE AGGRIEVED PERSONS WERE LAID OFF FOR UNION ACTIVITY. IN CERTAIN

CASES WHERE LAY-OFFS OCCUR DURING A PERIOD WHEN EMPLOYEES ARE BEING ORGANIZED BY A UNION, SUCH LAY-OFFS AT TIMES CREATE AN OBLIGATION ON THE COMPANY TO EXPLAIN THE REASONS FOR THE LAY-OFFS WHERE THE COMPANY HAS KNOWLEDGE OF THE UNION ACTIVITY AND HAS ATTEMPTED TO INTERVENE. IN THIS CASE, WE ARE SATISFIED FROM THE FACTS SET OUT ABOVE THAT THE LAY-OFFS WERE NECESSITATED BY PRODUCTION PROBLEMS WHICH ARE DESCRIBED ABOVE AND WERE NOT OCCASIONED BY THE FACT THAT THE COMPLAINANT UNION WAS ATTEMPTING TO ORGANIZE THE RESPONDENT'S EMPLOYEES. WHILE THE RESPONDENT FRANKLY ACKNOWLEDGED THAT IT KNEW OF THE UNION'S ORGANIZING ACTIVITIES IT DENIED THAT THE LAY-OFFS OR THE SELECTION OF PERSONS TO BE LAID OFF HAD ANYTHING TO DO WITH THE UNION'S ORGANIZING ATTEMPTS. IT IS TO BE NOTED THAT WHILE MR. IRVINE WAS KNOWN TO BE AN ACTIVE UNION ORGANIZER HE WAS NOT LAID OFF AND IS STILL EMPLOYED BY THE COMPANY. ANOTHER POINT IN THE COMPANY'S FAVOUR IS THE FACT THAT WHILE SOME OF THE PERSONS LAID OFF WERE KNOWN TO SUPPORT THE UNION, OTHERS WERE NOT KNOWN TO SUPPORT THE UNION, AND IN FACT ONE HAD NOT JOINED THE UNION. THE WARNING GIVEN TO MR. BRENNAN AND MR. IRVINE ABOUT SOLICITING UNION MEMBERSHIP ON COMPANY PREMISES WAS A FAIR WARNING WHICH WAS GIVEN UNDER THE AUTHORITY OF SECTION 53 OF THE LABOUR RELATIONS ACT. THE COMPANY DID NOT ACT PRECIPITOUSLY OR UNREASONABLY IN GIVING THE WARNING IN THE MANNER IN WHICH IT DID. IT IS TO BE NOTED THAT THE COMPANY'S LETTER OF FEBRUARY 18TH, WHEREIN THE COMPANY EXPRESSED ITS VIEWS WITH RESPECT TO THE UNION'S ATTEMPT TO ORGANIZE THE EMPLOYEES, DID NOT USE ANY COERCION, INTIMIDATION, THREAT, PROMISE OR UNDUE INFLUENCE AND THEREFORE WAS A VALID EXPRESSION OF THE COMPANY'S VIEWS IN THE MATTER AS AUTHORIZED BY SECTION 48 OF THE ACT.

13. HAVING REGARD TO THE FACTS OUTLINED ABOVE, ESPECIALLY THE FACT THAT ALL THE AGGRIEVED PERSONS WERE RECALLED TO WORK AS OPENINGS OCCURRED, WE FIND THAT THE COMPANY EXPLAINED TO OUR SATISFACTION WHY THE AGGRIEVED PERSONS WERE LAID OFF IN THE MANNER IN WHICH THEY WERE. ALTHOUGH IT WOULD HAVE BEEN MORE SATISFACTORY TO HAVE THE FOREMAN PRESENT TO TESTIFY, THE FACT THAT HE WAS NO LONGER WITH THE COMPANY IS A VALID REASON FOR THE COMPANY'S FAILURE TO CALL THE FOREMAN. HAVING REVIEWED ALL THE EVIDENCE AND HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, THE BOARD FINDS THAT THE COMPLAINANT HAS NOT SATISFIED THE PRIMARY ONUS ON IT AND HAS ACCORDINGLY FAILED TO ESTABLISH THAT GERRARD BRENNAN, SUSAN DUNCAN SHIRLEY ASHMAN AND MARIE KOSTAL WERE DISCHARGED BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTIONS 50 AND 52 OF THE LABOUR RELATIONS ACT.

14. THE COMPLAINT WITH RESPECT TO THE FOUR AGGRIEVED PERSONS IS THEREFORE DISMISSED.

15819-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V.
REININGER & SON LTD. (RESPONDENT).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS A. MAIN AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: L.A. MACLEAN AND F. RAO FOR THE COMPLAINANT, G.G. SMITH, C. BIRT AND S. CRIFO FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 14, 1969.

1. THIS IS AN APPLICATION MADE PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT COMPLAINS THAT THE AGGRIEVED PERSONS, EMINÉ ATOUT, MATILDA ZVER AND FRANCESCO SALATINO, HAVE BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 59(1) OF THE ACT.
2. THE COMPLAINANT WAS CERTIFIED BY THE BOARD BY A CERTIFICATE DATED FEBRUARY 12TH, 1969 FOR A UNIT COMPOSED OF "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO" WITH CERTAIN EXCEPTIONS THAT ARE NOT RELEVANT FOR PURPOSES OF THIS COMPLAINT. BY REGISTERED LETTER DATED FEBRUARY 14TH, 1969, THE COMPLAINANT SERVED NOTICE ON THE RESPONDENT OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT. THERE FOLLOWED A NUMBER OF MEETINGS BETWEEN REPRESENTATIVES OF THE COMPLAINANT AND THE RESPONDENT.
3. MATILDA ZVER, WHO IS IN THE BARGAINING UNIT, COMMENCED HER EMPLOYMENT WITH THE RESPONDENT IN JUNE OF 1967 AND EMINÉ ATOUT, WHO IS ALSO IN THE BARGAINING UNIT, COMMENCED HER EMPLOYMENT WITH THE RESPONDENT IN AUGUST OF 1968. DURING THE ENTIRE PERIOD OF BOTH OF THEIR EMPLOYMENT UNTIL THE END OF FEBRUARY 1969 THEY WERE CONTINUOUSLY EMPLOYED AS PUNCH PRESS OPERATORS ON THE DAY SHIFT FROM 7:30 A.M. TO 4:00 P.M. COMMENCING ON MARCH 3RD, 1969, THEY WERE REQUIRED TO WORK ON THE NIGHT SHIFT FROM 3:30 P.M. TO APPROXIMATELY MIDNIGHT, ON A ROTATING SCHEDULE OF FOUR WEEKS ON THE NIGHT SHIFT FOLLOWED BY FOUR WEEKS ON THE DAY SHIFT. THERE HAD BEEN A COMPANY POLICY OF ROTATING MALE EMPLOYEES IN CERTAIN DEPARTMENTS ON DAY AND NIGHT SHIFTS. UNTIL MARCH 3RD, 1969, HOWEVER, NO FEMALE EMPLOYEES HAD EVER WORKED ON THE NIGHT SHIFT.
4. EMINÉ ATOUT, IN ADDITION TO DOING WORK AS A PUNCH PRESS OPERATOR ON THE NIGHT SHIFT, WAS REQUIRED TO PERFORM CERTAIN OTHER DUTIES IN THE PAINT SHOP. THESE DUTIES IN THE PAINT SHOP PRIOR TO MARCH 3RD, 1969 HAD ALWAYS BEEN PERFORMED BY MALE EMPLOYEES. AS A RESULT OF BEING TRANSFERRED TO THE NIGHT SHIFT AND

PARTICULARLY BECAUSE SHE CONSIDERED THE WORK IN THE PAINT SHOP TOO ONEROUS FOR HER, MRS. ATOUT WAS EITHER DISCHARGED OR TERMINATED HER EMPLOYMENT WITH THE RESPONDENT. ALTHOUGH NO DATE WAS SPECIFIED IN THE EVIDENCE, IT WOULD APPEAR THAT HER SEPARATION FROM THE RESPONDENT OCCURRED IN APRIL OF THIS YEAR. THE COMPLAINANT, WE WOULD MENTION, IS NOT SEEKING ANY COMPENSATION WITH RESPECT TO MRS. ATOUT FOR THE PERIOD OF SEPARATION FROM THE RESPONDENT.

5. SECTION 59(1) OF THE ACT READS AS FOLLOWS:

WHERE NOTICE HAS BEEN GIVEN UNDER SECTION 11 OR SECTION 40 AND NO COLLECTIVE AGREEMENT IS IN OPERATION, NO EMPLOYER SHALL, EXCEPT WITH THE CONSENT OF THE TRADE UNION, ALTER THE RATES OF WAGES OR ANY OTHER TERM OR CONDITION OF EMPLOYMENT OR ANY RIGHT, PRIVILEGE OR DUTY, OF THE EMPLOYER, THE TRADE UNION OR THE EMPLOYEES, AND NO TRADE UNION SHALL, EXCEPT WITH THE CONSENT OF THE EMPLOYER, ALTER ANY TERM OR CONDITION OF EMPLOYMENT OR ANY RIGHT, PRIVILEGE OR DUTY OF THE EMPLOYER, THE TRADE UNION OR THE EMPLOYEES,

- (A) UNTIL THE MINISTER HAS APPOINTED A CONCILIATION OFFICER OR A MEDIATOR UNDER THIS ACT AND,
 - (i) SEVEN DAYS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES THE REPORT OF A CONCILIATION BOARD OR MEDIATOR, OR
 - (ii) FOURTEEN DAYS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES A NOTICE THAT HE DOES NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD,

AS THE CASE MAY BE; OR

- (B) UNTIL THE RIGHT OF THE TRADE UNION TO REPRESENT THE EMPLOYEES HAS BEEN TERMINATED,

WHICHEVER OCCURS FIRST.

6. AS HAS BEEN STATED, NOTICE WAS GIVEN BY THE COMPLAINANT TO THE RESPONDENT PURSUANT TO SECTION 11 OF THE ACT. FURTHER, DURING THE WHOLE PERIOD OF THEIR EMPLOYMENT WITH THE RESPONDENT MRS. ATOUT AND MRS. ZVER HAD WORKED ON THE DAY SHIFT. MOREOVER,

UNTIL MARCH 3RD, 1969, NO FEMALE EMPLOYEES HAD BEEN REQUIRED TO WORK ON THE NIGHT SHIFT. IN ALL THESE CIRCUMSTANCES, WE FIND THAT THE RESPONDENT ALTERED THE CONDITIONS OF THEIR EMPLOYMENT WITHIN THE MEANING OF SECTION 59(1) OF THE ACT. THE EVIDENCE IS THAT THE COMPLAINANT WAS NOT CONSULTED AND DID NOT CONSENT TO THE CHANGE IN THE CONDITIONS OF EMPLOYMENT OF THE TWO ABOVE NAMED AGGRIEVED PERSONS. AS WELL, THE TIME PERIODS PROVIDED FOR IN SECTION 59(1) HAD NOT EXPIRED. THE BOARD ACCORDINGLY FINDS THAT, BY CHANGING THE WORK SHIFTS OF MRS. ATOUT AND MRS. ZVER ON MARCH 3RD, 1969, FROM THE DAY TO THE NIGHT SHIFT ON A FOUR WEEK ROTATING BASIS, THE RESPONDENT CONTRAVERSED SECTION 59(1) OF THE ACT.

7. WITH RESPECT TO THE NAMED AGGRIEVED PERSON FRANCESCO SALATINO, THERE IS INSUFFICIENT EVIDENCE UPON WHICH THE BOARD IS PREPARED TO MAKE A FINDING THAT THE RESPONDENT HAS VIOLATED SECTION 59(1). THE COMPLAINT AS IT RELATES TO HIM IS THEREFORE DISMISSED.

8. OUR DETERMINATION OF THE ACTION TO BE TAKEN BY THE RESPONDENT IS AS FOLLOWS:

THE RESPONDENT SHALL REINSTATE AND EMPLOY EMINE ATOUT FORTHWITH IN THE SAME OR LIKE CONDITIONS OF EMPLOYMENT AS SHE HAD WORKED PRIOR TO MARCH 3RD, 1969, UNTIL THE EXPIRY OF TIME LIMITATIONS ESTABLISHED IN SECTION 59(1) OF THE ACT.

THE RESPONDENT SHALL EMPLOY MATILDA ZVER FORTHWITH IN THE SAME OR LIKE CONDITIONS OF EMPLOYMENT AS SHE HAD WORKED PRIOR TO MARCH 3RD, 1969, UNTIL THE EXPIRY OF TIME LIMITATIONS ESTABLISHED IN SECTION 59(1) OF THE ACT.

THE BOARD FURTHER DIRECTS THAT THE RESPONDENT REFRAIN FROM TAKING ANY ACTION WHICH CONTRAVENES SECTION 59(1) OF THE LABOUR RELATIONS ACT.

15883-68-U: ERNEST T. GOUDREAU (COMPLAINANT) v. MANAGEMENT OF HURON LODGE ROBERT D. CHAPPELL ADMINISTRATOR RALPH SHARP ASSISTANT PAUL SENAY LOCAL 543 # C.U.P.E. PRESIDENT (BOTH PARTIES) CORPORATION OF CITY OF WINDSOR AND CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 543 (RESPONDENTS).

BEFORE: G.W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

DECISION OF THE BOARD: MAY 5, 1969.

1. THIS COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT ORIGINALLY NAMED ROBERT D. CHAPPELL, RALPH SHARP AND PAUL SENAY AS RESPONDENTS. THE FIRST TWO PERSONS ARE MANAGEMENT EMPLOYEES OF HURON LODGE WHICH IS OPERATED BY THE CITY OF WINDSOR. MR. SENAY IS THE PRESIDENT OF LOCAL 543 OF THE CANADIAN UNION OF PUBLIC EMPLOYEES. THE COMPLAINANT HAS REQUESTED THAT THE CITY OF WINDSOR AND CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 543 BE ADDED AS RESPONDENTS. THE FIELD OFFICER APPOINTED IN THIS MATTER HAS BEEN CONCERNED NOT ONLY WITH THE NAMED PERSONS BUT ALSO WITH THE CITY AND THE LOCAL. IN ALL THE CIRCUMSTANCES, WE FIND IT PROPER TO ADD THE CITY OF WINDSOR AND CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 543 AS RESPONDENTS.

2. THE FIELD OFFICER HAS SUBMITTED A LENGTHY REPORT TO THE BOARD FOLLOWING EXTENSIVE INQUIRIES INTO THE MATTER WITH ALL PERSONS CONCERNED. INCLUDED IN THIS REPORT IS A LENGTHY STATEMENT FROM THE COMPLAINANT. THE GIST OF THE COMPLAINT IS THAT THE AGGRIEVED PERSON WHO IS ALSO THE COMPLAINANT, WAS DISCHARGED BY PERSONS ACTING ON BEHALF OF THE CITY OF WINDSOR, CONTRARY TO SECTIONS 65 AND 59A OF THE LABOUR RELATIONS ACT. FOLLOWING THE DISCHARGE, THE COMPLAINANT FILED A GRIEVANCE UNDER THE PROVISIONS OF THE COLLECTIVE AGREEMENT BETWEEN LOCAL 543 AND THE CITY OF WINDSOR. THE GRIEVANCE ULTIMATELY PROCEEDED TO ARBITRATION AND THE ARBITRATION BOARD RULED AGAINST THE GRIEVOR AND UPHELD THE DISCHARGE. THE COMPLAINANT THEN LAUNCHED THE PRESENT PROCEEDINGS.

3. MR. DOUDREAU'S TROUBLES APPARENTLY STARTED OVER AN INCIDENT IN LATE APRIL, 1968 IN THE KITCHEN OF HURON LODGE, WHERE HE WAS EMPLOYED AS AN ASSISTANT COOK. THIS INCIDENT HAD TO DO WITH THE PREPARATION OF FOOD AND THE HEAD COOK TOLD HIM TO SEE MR. CHAPPELL, THE ADMINISTRATOR OF THE LODGE. AT THE MEETING WITH CHAPPELL HE WAS ASKED TO RESIGN. HE REFUSED AND ASKED FOR A TRANSFER. THE RESULT OF THIS MEETING WAS THAT HE SIGNED A PAPER STATING THAT HE WAS GOING ON VACATION AND IF HE COULD NOT FIND OTHER WORK HE WOULD LEAVE WITH TWO WEEKS' PAY IN LIEU OF NOTICE. HOWEVER, ON MAY 10 HE RETURNED TO WORK AND LATER IN THE MONTH OF MAY WAS INFORMED BY CHAPPELL THAT HIS ANNUAL INCREMENT WAS TO BE WITHHELD PENDING IMPROVEMENT IN HIS BEHAVIOUR AND QUALITY OF WORK. MR. DOUDREAU LODGED AN APPEAL AGAINST THIS DECISION AND THIS WAS HEARD IN JULY, 1968 BY THE CITY MANAGER. PART OF MR. DOUDREAU'S COMPLAINT IS CONCERNED WITH THE WAY IN WHICH HIS APPEAL WAS HANDLED. HE ALLEGES THAT THIS WAS A "REAL KANGAROO COURT" AND THAT HE WAS NOT ALLOWED TO GIVE ANY EVIDENCE IN HIS OWN DEFENCE. THE RESULT OF THIS APPEAL WAS THAT HE WAS SUSPENDED WITH A RECOMMENDATION FOR DISCHARGE AND IT WAS THIS DECISION WHICH WAS THE BASIS FOR HIS GRIEVANCE SUBSEQUENTLY CARRIED THROUGH TO ARBITRATION.

4. THE COMPLAINANT HAS MANY COMPLAINTS WITH RESPECT TO THE ARBITRATION PROCEEDINGS, INCLUDING THE LONG TIME IT TOOK BEFORE A FINAL AWARD WAS MADE, AND THE WAY IN WHICH COUNSEL ON BEHALF OF THE UNION CONDUCTED THE CASE. THERE ARE ALSO ALLEGATIONS THAT THERE WAS SOME SORT OF COLLUSION BETWEEN UNION PERSONNEL AND THE CITY IN ORDER TO GET RID OF HIM. THE ARBITRATION BOARD FOUND THAT MR. GOUDREAU WAS DISCHARGED BECAUSE OF HIS INABILITY TO CONTROL HIS EMOTIONS, RESULTING IN EXTREME TENSION BEING CREATED AMONG THE WORKING STAFF AND THAT THE DISCHARGE WAS JUSTIFIED.

5. THE COMPLAINANT ALLEGES THAT HE WAS DISCHARGED CONTRARY TO SECTIONS 65 AND 59A OF THE LABOUR RELATIONS ACT. IN THE NATIONAL SEA PRODUCTS LIMITED CASE, O.L.R.B. MONTHLY REPORT, MAY 1961, P. 62, THE BOARD SAID:

...IN OUR OPINION, SECTION 65 IS A PROCEDURAL AND REMEDIAL SECTION. IT DOES NOT IN ITSELF ESTABLISH A SUBSTANTIVE RIGHT. THE BOARD'S JURISDICTION TO GRANT RELIEF UNDER SECTION 65 IS LIMITED TO CASES IN WHICH THE AGGRIEVED PERSON HAS BEEN REFUSED EMPLOYMENT, DISCHARGED, DISCRIMINATED AGAINST, THREATENED, COERCED, INTIMIDATED, OR OTHERWISE DEALT WITH CONTRARY TO SOME SPECIFIC PROVISION OF THE LABOUR RELATIONS ACT.

THE COMPLAINANT MUST THEREFORE FOUND HIS COMPLAINT ON A VIOLATION OF SOME SECTION OF THE LABOUR RELATIONS ACT OTHER THAN SECTION 65. HE RELIES ON SECTION 59A WHICH DEALS WITH THE PROTECTION OF WITNESSES TESTIFYING IN PROCEEDINGS UNDER THE ACT. WE HAVE CAREFULLY CONSIDERED THE COMPLAINANT'S STATEMENT TO THE FIELD OFFICER AND HIS VARIOUS ALLEGATIONS AND WE ARE UNABLE TO FIND THEREIN ANY SUGGESTION THAT HIS DISCHARGE CAME ABOUT AS A RESULT OF A VIOLATION OF SECTION 59A OR, FOR THAT MATTER, ANY OTHER SECTION OF THE LABOUR RELATIONS ACT. PUT ANOTHER WAY, THERE IS NOTHING IN THE MATERIAL BEFORE US WHICH WOULD SUGGEST THAT THE COMPLAINANT WAS DISCHARGED FOR WHAT, BROADLY SPEAKING, MAY BE TERMED TRADE UNION ACTIVITY. ASSUMING, BUT WITHOUT IN ANY WAY DECIDING, THAT THE COMPLAINANT'S ALLEGATIONS ARE TRUE IN WHOLE OR IN PART, THIS BOARD IS NOT EMPOWERED TO SIT ON APPEAL FROM DECISIONS OF ARBITRATORS OR ARBITRATION BOARDS, NOR IS IT EMPOWERED TO DECIDE WHETHER THE GRIEVANCE PROCEDURE IN A COLLECTIVE AGREEMENT AND THE PROCEEDINGS BEFORE AN ARBITRATION BOARD HAVE BEEN CARRIED ON FAIRLY OR UNFAIRLY. THAT IS A MATTER FOR ANOTHER FORUM. AS STRESSED ABOVE, WHAT MUST BE SHOWN IS THAT THE DISCHARGE WAS A VIOLATION OF THE LABOUR RELATIONS ACT, AND WE RE-ITERATE THAT WE ARE UNABLE TO FIND ANY EVIDENCE IN THE MATERIAL BEFORE US THAT SUGGESTS SUCH A VIOLATION. IN MANY RESPECTS THIS CASE IS NOT UN-LIKE LOCAL-OFFICERS OF 582 AND WALTER KENSIT, O.L.R.B. MONTHLY REPORT, OCTOBER 1966, P. 666.

6. IN THE RESULT AND FOR THE FOREGOING REASONS, THE COMPLAINT DOES NOT IN OUR OPINION MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND, PURSUANT TO SECTION 46(1) OF THE BOARD'S RULES OF PROCEDURE, THE COMPLAINT IS HEREBY DISMISSED.

15909-68-U: AMALGAMATED CLOTHING WORKERS OF AMERICA, CLC AFL-CIO COMPLAINANT) v. PEARL LAUNDRY CO. LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND F.W. MURRAY.

APPEARANCES AT THE HEARING: GERALD CHARNEY, TONY DUCHARME AND JOE SUTTER FOR THE COMPLAINANT; A.A. MORSCHER, W.E. RENAUD AND A. COOMBS FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN, RORY F. EGAN AND BOARD MEMBER O. HODGES: MAY 22, 1969.

1. THIS IS A COMPLAINT BROUGHT PURSUANT TO THE PROVISIONS OF SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSON VERA BELL HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 59A SUB-SECTION (1) (A) OF THE LABOUR RELATIONS ACT.

2. THE COMPLAINANT SEEKS REINSTATEMENT IN EMPLOYMENT AND COMPENSATION FOR WAGES LOST FOR THE AGGRIEVED WHO WAS DISCHARGED ON MARCH 17TH, 1969.

3. SECTION 59A (1)(A) PROVIDES AS FOLLOWS:

"NO EMPLOYER, EMPLOYERS' ORGANIZATION OR PERSON ACTING ON BEHALF OF AN EMPLOYER OR EMPLOYERS' ORGANIZATION SHALL,

(A) REFUSE TO EMPLOY OR CONTINUE TO EMPLOY A PERSON:

BECAUSE OF A BELIEF THAT HE MAY TESTIFY IN A PROCEEDING UNDER THIS ACT OR BECAUSE HE HAS MADE OR IS ABOUT TO MAKE A DISCLOSURE THAT MAY BE REQUIRED OF HIM IN A PROCEEDING UNDER THIS ACT OR BECAUSE HE HAS MADE AN APPLICATION OR FILED A COMPLAINT UNDER THIS ACT OR BECAUSE HE HAS PARTICIPATED OR IS ABOUT TO PARTICIPATE IN A PROCEEDING UNDER THIS ACT."

4. AT THE CLOSE OF THE EVIDENCE, COUNSEL FOR THE RESPONDENT MOVED THAT THE COMPLAINT BE DISMISSED ON THE GROUND THAT THE COMPLAINANT HAD NOT ESTABLISHED THAT THE AGGRIEVED HAD "PARTICIPATED IN A PROCEEDING UNDER THIS ACT" WITHIN THE MEANING OF THE ABOVE SECTION. IT WAS COMMON GROUND THAT NONE OF THE OTHER ALTERNATIVE REASONS LISTED IN THE SECTION WERE APPLICABLE TO THE PRESENT CIRCUMSTANCES.

5. THE EVIDENCE IS THAT ON MARCH 17, 1969, VERNA BELL ATTENDED AT A HEARING BY THE ONTARIO LABOUR RELATIONS BOARD OF AN APPLICATION MADE BY THE COMPLAINANT HEREIN FOR CERTIFICATION AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT. IT IS CLEAR THAT SHE PLAYED NO VOCALLY ACTIVE ROLE IN THE HEARING BEFORE THE BOARD. IT WAS THE SUBMISSION OF COUNSEL FOR THE RESPONDENT THAT PROOF OF THE FACT THAT SHE ATTENDED AT THE HEARING FALLS SHORT OF ESTABLISHING THAT SHE HAD "PARTICIPATED IN A PROCEEDING UNDER THE ACT". HE NOTED THAT IN THE DECISION ISSUED BY THE BOARD WITH RESPECT TO THE ABOVE APPLICATION, VERNA BELL WAS NOT NAMED IN THE LIST OF APPEARANCES. HE ARGUED THAT SHE WAS, IN FACT, NOTHING MORE THAN A SPECTATOR.

6. THE EVIDENCE OF JOE SUTTER, AN ORGANIZER FOR THE COMPLAINANT, AND THAT OF VERNA BELL, IS TO THE EFFECT THAT SHE ATTENDED THE CERTIFICATION HEARING AT THE REQUEST OF THE UNION. SHE WAS BROUGHT AS A REPRESENTATIVE OF THE EMPLOYEES IN THE BARGAINING UNIT AND IN ORDER TO TESTIFY BEFORE THE BOARD IN THE EVENT THAT IT BECAME NECESSARY TO DO SO. SHE ATTENDED VOLUNTARILY AND NOT UNDER SUBPOENA.

7. IT IS OUR OPINION THAT IN VIEW OF THE FACT THAT SHE WAS ASKED TO ATTEND BY THE UNION FOR THE SPECIFIC PURPOSE ABOVE NOTED AND BECAUSE OF HER REPRESENTATIVE CAPACITY, VERNA BELL WAS PRESENT AT THE BOARD HEARING ON MARCH 17TH, NOT AS A SPECTATOR, BUT AS A PARTICIPANT IN A PROCEEDING BEFORE THE BOARD. AS SUCH PARTICIPANT, SHE COMES WITHIN THE PROVISIONS OF SECTION 59A. TO FIND OTHERWISE WOULD BE TO PLACE TOO NARROW AND RESTRICTED A SCOPE UPON THE PROTECTIVE INTENT OF THE SECTION.

8. THERE REMAINS THE FURTHER QUESTION AS TO WHETHER VERNA BELL WAS DISCHARGED BECAUSE OF HER PARTICIPATION IN THE CERTIFICATION PROCEEDINGS ON MARCH 17TH OR FOR OTHER REASONS. THERE WERE REALLY TWO GROUNDS ADVANCED BY THE RESPONDENT AS JUSTIFICATION FOR THE DISCHARGE. ONE HAD TO DO WITH HER WORK RECORD, THE OTHER CONCERNED HER ABSENCE ON MARCH 17TH FOR THE LABOUR BOARD HEARING AT THE CONCLUSION OF WHICH SHE FAILED TO RETURN TO WORK. IT WAS THE CONTENTION OF THE RESPONDENT THAT THE WORK RECORD WHILE UNACCEPTABLE, HAD BEEN TOLERATED UNTIL THIS INCIDENT OF MARCH 17TH WHICH, THE CHIEF WITNESS FOR THE RESPONDENT MR. COOMBS TESTIFIED, CONSTITUTED THE LAST STRAW.

9. THERE IS NO DOUBT AT ALL THAT COOMBS KNEW ON MARCH 14TH THAT VERNA BELL WOULD BE ABSENT ON MONDAY, THE 17TH OF MARCH AND THAT SHE WOULD BE ATTENDING THE CERTIFICATION PROCEEDINGS. HE KNEW THIS THROUGH A TELEPHONE CONVERSATION WITH A REPRESENTATIVE OF THE UNION JOE SUTTER, ON THE 14TH. THAT HE KNEW IS CONFIRMED

BY THE FACT THAT HE ARRANGED, ON THE 14TH, FOR A GIRL TO COME IN TO REPLACE VERA BELL ON THE 17TH. THERE IS A CONFLICT AS TO WHETHER COOMBS TOLD SUTTER IT WOULD BE IN ORDER FOR BELL TO BE ABSENT. SUTTER CERTAINLY UNDERSTOOD THAT THAT WAS THE CASE. COOMBS SAYS THAT ALL HE DID WAS ACKNOWLEDGE THE CALL FROM THE UNION WITHOUT INDICATING THAT HE WAS GIVING PERMISSION. HE STATED THAT HE FELT VERA BELL SHOULD HAVE COME HERSELF TO ASK HIM FOR PERMISSION AND THAT HE WAS WAITING FOR HER TO DO SO. VERA BELL TESTIFIED THAT SHE UNDERSTOOD IT WOULD NOT BE NECESSARY FOR HER TO ASK PERMISSION SINCE SHE BELIEVED THE UNION WAS LOOKING AFTER THE MATTER. IN ANY EVENT, AS ALREADY STATED, COOMBS KNEW ON THE 14TH THAT BELL WAS GOING TO THE HEARING ON THE 17TH. HE SAID IT WAS NOT UP TO HIM TO ASK HER ABOUT THE HEARING BECAUSE HE UNDERSTOOD, SO HE TESTIFIED, THAT HE SHOULD NOT TALK TO EMPLOYEES ABOUT THE UNION.

10. THERE WAS CONFLICT IN THE EVIDENCE OF VERA BELL AND COOMBS AS TO WHETHER IT WAS CUSTOMARY FOR THE RESPONDENT TO DISCHARGE EMPLOYEES FOR AN ABSENCE OF ONLY ONE DAY WHERE PERMISSION HAD NOT BEEN OBTAINED. AS ALREADY NOTED, WE HAVE FOUND THAT COOMBS KNEW IN ADVANCE THAT VERA BELL WOULD BE ABSENT ON MARCH 17TH SO THAT THE SITUATION DIFFERS FROM THAT OF AN EMPLOYEE ABSENT WITHOUT NOTIFICATION OF ANY KIND. PROVISION HAD BEEN MADE FOR A REPLACEMENT IN THIS CASE. IN ANY EVENT, WE ARE PERSUADED THAT IT WAS NOT CUSTOMARY THAT EMPLOYEES WHO WERE ABSENT FOR A DAY WERE AUTOMATICALLY DISCHARGED AS COOMBS WOULD HAVE THE BOARD BELIEVE. ON THIS POINT, WE PREFER BELL'S EVIDENCE THAT SUCH WAS NOT THE INEVITABLE RESULT OF SUCH AN ABSENCE. SHE HAD NEVER HEARD THAT EMPLOYEES WHO HAD BEEN ABSENT UNDER SUCH CIRCUMSTANCES HAD ALWAYS BEEN DISCHARGED. ON ONE OCCASION AT LEAST, SHE SAID, SHE WAS ASKED TO REQUEST AN EMPLOYEE WHO HAD BEEN ABSENT FOR SOME TIME TO RETURN TO WORK ALTHOUGH NO REASON FOR THE ABSENCE HAD BEEN ORIGINALLY GIVEN THE RESPONDENT.

11. FURTHERMORE, WE DO NOT ACCEPT THE EVIDENCE OF COOMBS THAT THE ABSENCE CONSTITUTED THE "LAST STRAW" IN WHAT PURPORTED TO BE A BENEVOLENT TOLERATION OF INCOMPETENCE ON THE PART OF THE AGGRIEVED. NOTHING WAS SAID TO HER CONCERNING HER WORK RECORD WHEN SHE WAS DISCHARGED. IN OUR OPINION, THE REFERENCES TO THE AGGRIEVED'S ABILITIES WERE SIMPLY AFTERTHOUGHTS ON COOMBS PART INTRODUCED BY HIM IN AN ATTEMPT TO BOLSTER THE RESPONDENT'S CASE. IT WAS QUITE APPARENT THAT COOMBS WAS CONSIDERABLY ANNOYED BECAUSE THE UNION HAD TELEPHONED ABOUT BELL'S ABSENCE AND THAT THIS HAD A DISTINCT INFLUENCE UPON HIS ATTITUDE TO THE WHOLE AFFAIR. IN OUR OPINION, BASED UPON ALL OF THE EVIDENCE, THE AGGRIEVED WOULD NOT HAVE BEEN DISCHARGED IF HER ABSENCE HAD NOT BEEN CONNECTED WITH THE UNION AND THE APPLICATION PROCEEDINGS BEFORE THE BOARD.

12. HAVING REGARD, THEREFORE, TO ALL OF THE EVIDENCE AND THE SUBMISSION OF COUNSEL FOR BOTH PARTIES, WE FIND THAT THE RESPONDENT DISMISSED VERA BELL ON MARCH 17TH, 1969, CONTRARY TO THE PROVISIONS OF SECTION 59A(1)(A) OF THE LABOUR RELATIONS ACT. OUR DETERMINATION OF THE ACTION TO BE TAKEN BY THE RESPONDENT IS AS FOLLOWS:

- (1) THE RESPONDENT SHALL FORTHWITH REINSTATE AND EMPLOY VERA BELL IN THE SAME OR LIKE EMPLOYMENT WITH THE SAME WAGES AND EMPLOYMENT BENEFITS AS SHE HAD RECEIVED PRIOR TO AND UP TO THE TIME OF HER DISCHARGE ON MARCH 17TH, 1969.
- (2) AS COMPENSATION FOR LOST WAGES AND EMPLOYMENT BENEFITS FROM MARCH 17TH, 1969, TO AND INCLUDING MAY 2ND, 1969, THE RESPONDENT SHALL FORTHWITH PAY VERA BELL THE SUM OF \$335.00.
- (3) THE RESPONDENT AND THE COMPLAINANT SHALL MEET FORTHWITH WITH A VIEW TO AGREEING UPON THE AMOUNT OF LOSS OF EARNINGS AND EMPLOYMENT BENEFITS IF ANY, NOW SUSTAINED OR HEREINAFTER SUSTAINED BY VERA BELL BETWEEN THE DATE OF THE HEARING ON MAY 2ND, 1969, AND THE DATE OF HER ACTIVE RE-EMPLOYMENT. IN THE EVENT THE PARTIES ARE UNABLE TO AGREE UPON THE AMOUNT OF SUCH FURTHER COMPENSATION WITHIN SEVEN (7) DAYS AFTER THE RELEASE OF THIS DECISION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY AGREE UPON, THE BOARD WILL DETERMINE THE AMOUNT UPON THE MOTION OF EITHER PARTY.

DECISION OF BOARD MEMBER F.W. MURRAY:

MAY 22, 1969.

1. I DISSENT.
2. WITH RESPECT TO THE MOTION BY COUNSEL FOR THE RESPONDENT THAT THE COMPLAINT BE DISMISSED ON THE GROUNDS THAT THE COMPLAINANT HAD NOT ESTABLISHED THAT THE AGRIEVED PARTY HAD "PARTICIPATED IN A PROCEEDING UNDER THIS ACT" IN ACCORDANCE WITH THE CHARGE FILED BY THE COMPLAINANT, NAMELY IN VIOLATION OF SECTION 59A(1) OF THE ACT, I FEEL IT NECESSARY TO MAKE SEVERAL OBSERVATIONS.
3. FIRST, WITH RESPECT TO THE TESTIMONY OF MR. SUTTER, IN WHICH HE CLAIMED THAT MISS VERA BELL HAD BEEN BROUGHT TO THE HEARING ON MARCH 17TH AS A REPRESENTATIVE OF THE EMPLOYEES IN THE BARGAINING UNIT, I FIND IT DIFFICULT TO UNDERSTAND THIS CLAIM IN THAT I HAD BEEN LED TO BELIEVE THAT THE VERY PURPOSE FOR HEARINGS OF THIS NATURE IS FOR THE UNION TO SATISFY THE BOARD THAT THE COMPLAINANT UNION IS INDEED THE REPRESENTATIVE OF THE EMPLOYEES IN THE BARGAINING UNIT.

4. Moreover, I am of the opinion that if the Union anticipated calling Verna Bell as a witness to give testimony, it would have been easy for the complainant, in order to make sure that there was no misunderstanding, to have sought her attendance by way of a subpoena, and it is the Board's practice to issue a subpoena immediately upon the request of either party to the proceedings.

5. This conclusion is drawn only because of the evidence in this case. The significant evidence in this respect was that the phone call by Mr. Sutter to Mr. Coombs was purely directory on the part of Mr. Sutter, and secondly, both parties adduced evidence concerning the past relationship of the Union and the respondent and their past proceedings before the Ontario Labour Relations Board. It is in view of this evidence that I have made these observations.

6. Therefore, I would have allowed the motion of the respondent and dismissed the complaint under section 59A(1)(a).

7. Moreover, I would not have concluded that the aggrieved person Verna Bell was dismissed in contravention of the Act, even assuming the aggrieved was a participant at the hearing on March 17th. I gathered from the evidence that she knew she had been placed from job to job because she was slow, and she defended the fact that she was slower than other employees in the sorting operation because she was more thorough than other employees and that the quality of her work was better than other employees who performed the job faster.

8. I have concluded, based on all the evidence, that the aggrieved would not have been dismissed if she had returned to work early in the afternoon of March 17th, having had time after the Board hearing on that day to have returned to Guelph and had her mid-day meal.

9. Accordingly, if I had found that the aggrieved was a participant within the meaning of section 59A(1)(a), I would not have found that the respondent dismissed the aggrieved contrary to these provisions of the Labour Relations Act. I would have dismissed the complaint.

16139-69-U: (MRS.) ALBERTINE LALONDE (COMPLAINANT) v. PRACTICAL NURSES REGISTRY, (MRS.) CHRISTINE YETMAN, REGISTRAR (RESPONDENTS).

BEFORE: G.W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R.W. TEAGLE.

DECISION OF THE BOARD: MAY 8, 1969.

1. THIS IS A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT ASKS THAT SHE BE REINSTATED AT THE REGISTRY OPERATED BY THE RESPONDENTS.
2. THE COMPLAINANT ALLEGES THAT SHE WAS DISCHARGED CONTRARY TO SECTION 65 OF THE LABOUR RELATIONS ACT. IN THE NATIONAL SEA PRODUCTS LIMITED CASE, O.L.R.B. MONTHLY REPORT, MAY 1961, P. 62, THE BOARD SAID:

...IN OUR OPINION, SECTION 65 IS A PROCEDURAL AND REMEDIAL SECTION. IT DOES NOT IN ITSELF ESTABLISH A SUBSTANTIVE RIGHT. THE BOARD'S JURISDICTION TO GRANT RELIEF UNDER SECTION 65 IS LIMITED TO CASES IN WHICH THE AGGRIEVED PERSON HAS BEEN REFUSED EMPLOYMENT, DISCHARGED, DISCRIMINATED AGAINST, THREATENED, COERCED, INTIMIDATED, OR OTHERWISE DEALT WITH CONTRARY TO SOME SPECIFIC PROVISION OF THE LABOUR RELATIONS ACT.

THE COMPLAINANT MUST THEREFORE FOUND HER COMPLAINT ON A VIOLATION OF SOME SECTION OF THE LABOUR RELATIONS ACT OTHER THAN SECTION 65. THE PRESENT COMPLAINT DOES NOT ALLEGE A VIOLATION OF ANY SECTION OF THE LABOUR RELATIONS ACT OTHER THAN SECTION 65. THERE IS NOTHING IN THE BODY OF THE COMPLAINT WHICH SUGGESTS THAT THE RESPONDENTS HAVE IN ANY WAY VIOLATED ANY OTHER SECTION OF THE ACT. PUT ANOTHER WAY, THERE IS NOTHING IN THE COMPLAINT FROM WHICH IT MAY REASONABLY BE INFERRRED THAT THE COMPLAINANT HAS BEEN DEALT WITH BY THE RESPONDENTS BECAUSE OF HER ASSOCIATION WITH OR ACTIVITY ON BEHALF OF A TRADE UNION.

3. HAVING REGARD TO THE ABOVE CONSIDERATIONS, THE COMPLAINT DOES NOT IN THE OPINION OF THE BOARD MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND, PURSUANT TO SECTION 46(1) OF THE BOARD'S RULES OF PROCEDURE, THE COMPLAINT IS THEREFORE DISMISSED.

INDEXED ENDORSEMENT - SECTION 47(A)

15561-68-M: THE WATERLOO COUNTY BOARD OF EDUCATION (APPLICANT)
V. THE CUSTODIANS AND MAINTENANCE ASSOCIATION AND CANADIAN UNION
OF PUBLIC EMPLOYEES, LOCAL 269 (RESPONDENTS).

BEFORE; J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: J.J. KELLY, Q.C., FOR THE APPLICANT,
W. S. COOK, J. BAUMAN AND J. WOODHALL FOR THE RESPONDENT THE
CUSTODIANS AND MAINTENANCE ASSOCIATION, MARIO HIKL, F. L. TAYLOR
AND E.A. MOYNES FOR THE RESPONDENT CANADIAN UNION OF PUBLIC EM-
PLOYEES, LOCAL 269.

DECISION OF THE BOARD: MAY 8, 1969.

1. THIS IS AN APPLICATION FOR RELIEF UNDER SECTION 47A OF THE LABOUR RELATIONS ACT. THE BOARD IN ITS DECISION DATED FEBRUARY 11TH, 1969 IN THIS MATTER DIRECTED THAT A REPRESENTATION VOTE BE TAKEN IN THE VOTING CONSTITUENCY COMPRISING "ALL EMPLOYEES OF THE APPLICANT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN".

2. FOR THE REASONS SET OUT IN THE BOARD'S DECISION, THE VOTERS WERE ASKED TO INDICATE WHETHER OR NOT THEY WISHED TO BARGAIN COLLECTIVELY THROUGH THE CUSTODIANS AND MAINTENANCE ASSOCIATION OR THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 269 OR NO TRADE UNION.

3. THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE REPRESENTATION VOTE WAS SEALED PENDING THE FURTHER DIRECTION OF THE BOARD.

4. FOLLOWING THE TAKING OF THE REPRESENTATION VOTE, THIS MATTER CAME ON FOR CONTINUATION OF HEARING "TO HEAR THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE BARGAINING UNIT, THE EFFECT TO BE GIVEN TO THE RESULTS OF THE REPRESENTATION VOTE (I.E. IS A PLURALITY OR A MAJORITY REQUIRED) AND ALL OUTSTANDING ISSUES".

5. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT THE APPLICANT CAME INTO EXISTENCE ON JANUARY 1ST, 1969, PURSUANT TO THE PROVISIONS OF THE SECONDARY SCHOOLS AND BOARDS OF EDUCATION ACT, 1968, CHAPTER 122, STATUTES OF ONTARIO, 1968. SECTION 84(2)(A) OF THAT ACT PROVIDES THAT "ALL BOARDS THAT HAVE JURISDICTION WHOLLY OR PARTLY IN THE SCHOOL DIVISION ARE DISSOLVED". BY VIRTUE OF THIS SECTION, THE PREDECESSOR BOARDS OF EDUCATION WERE DISSOLVED AT THE TIME THE APPLICANT WAS CREATED ON JANUARY 1ST, 1969.

6. SECTION 84(2)(C) OF THE SECONDARY SCHOOLS AND BOARDS OF EDUCATION ACT, 1968 READS AS FOLLOWS:

84(2)

UPON THE ORGANIZATION OF A DIVISIONAL BOARD OF A SCHOOL DIVISION OF A DEFINED CITY AND IN RESPECT OF DIVISIONAL BOARDS OF ALL OTHER SCHOOL DIVISIONS ON THE 1ST DAY OF JANUARY, 1969,

(c)

ALL DEBTS, CONTRACTS, AGREEMENTS AND LIABILITIES FOR WHICH SUCH BOARDS WERE LIABLE, EXCEPT EMPLOYMENT CONTRACTS WITH TEACHERS, BECOME OBLIGATIONS OF THE DIVISIONAL BOARD OR BOARDS AS PROVIDED BY THE ARBITRATORS UNDER SUBSECTIONS 3 AND 4;

7. WE FIND THAT BARGAINING RIGHTS, WHETHER FLOWING FROM CERTIFICATION OR COLLECTIVE AGREEMENTS, CONTINUE AS "OBLIGATIONS" OF BOARD OF EDUCATION CREATED BY THE SECONDARY SCHOOLS AND BOARDS OF EDUCATION ACT, 1968, PURSUANT TO THE PROVISIONS OF SECTION 84(2)(C) OF THAT ACT. HOWEVER, WE ARE OF OPINION THAT SECTION 84(2)(C) OF THE SECONDARY SCHOOLS AND BOARDS OF EDUCATION ACT, 1968 MUST BE READ IN CONJUNCTION WITH AND APPLIED SUBJECT TO THE PROVISIONS OF SECTION 47A OF THE LABOUR RELATIONS ACT. THERE IS NOTHING IN THE PROVISIONS OF SECTION 84(2)(C) WHICH WOULD CAUSE THE BARGAINING RIGHTS WHICH CONTINUE AS AN OBLIGATION OF THE APPLICANT TO BE A DIFFERENT TYPE OF OBLIGATION THAN AN OBLIGATION OF A SUCCESSOR EMPLOYER WHO BUYS A BUSINESS WITHIN THE MEANING OF SECTION 47A OF THE LABOUR RELATIONS ACT, WHERE THE EMPLOYEES OF SUCH BUSINESS WERE BOUND BY THE PROVISIONS OF A COLLECTIVE AGREEMENT. WHERE THE PREDECESSOR EMPLOYER WAS BOUND BY THE PROVISIONS OF A COLLECTIVE AGREEMENT, THE TRADE UNION THAT IS PARTY TO SUCH COLLECTIVE AGREEMENT IS ENTITLED TO GIVE NOTICE TO BARGAIN FOR A NEW COLLECTIVE AGREEMENT. THE COLLECTIVE AGREEMENT WHICH WAS BINDING ON THE PREDECESSOR EMPLOYER DOES NOT CONTINUE IN OPERATION AND IS NOT BINDING ON THE SUCCESSOR EMPLOYER. HOWEVER, THE PRE-EXISTING BARGAINING RIGHTS UNDER THE COLLECTIVE AGREEMENT CREATE AN OBLIGATION ON THE SUCCESSOR EMPLOYER BY VIRTUE OF SECTION 47A OF THE ACT WHICH OBLIGATION IS FULFILLED WHEN THE SUCCESSOR EMPLOYER COMPLIES WITH THE PROVISIONS OF SECTION 47A OF THE ACT. SIMILARLY, THE "OBLIGATION" CREATED BY SECTION 84(2)(C) MAY BE SATISFIED WHEN THE APPLICANT COMPLIES WITH THE PROVISIONS OF SECTION 47A OF THE ACT. WE ACCORDINGLY FIND THAT THERE IS NOTHING IN THE PROVISIONS OF SECTION 84(2)(C) WHICH IS CONTRARY TO OR INCOMPATIBLE WITH THE PROVISIONS OF SECTION 47A OF THE LABOUR RELATIONS ACT. INDEED, SECTION 47A(10) APPEARS TO SPECIFICALLY CONTEMPLATE THE PROBLEM WITH WHICH THIS BOARD IS FACED IN CASES WHERE THERE ARE CONFLICTING OBLIGATIONS.

8. SECTION 47A(10) OF THE LABOUR RELATIONS ACT READS AS FOLLOWS:

WHERE ONE OR MORE MUNICIPALITIES AS DEFINED IN THE DEPARTMENT OF MUNICIPAL AFFAIRS ACT IS ERECTED INTO ANOTHER MUNICIPALITY, OR TWO OR MORE SUCH MUNICIPALITIES ARE AMALGAMATED, UNITED OR OTHERWISE JOINED TOGETHER, OR ALL OR PART OF ONE SUCH MUNICIPALITY IS ANNEXED, ATTACHED OR ADDED TO ANOTHER SUCH MUNICIPALITY, THE EMPLOYEES OF THE MUNICIPALITIES CONCERNED ARE DEEMED TO HAVE BEEN INTERMINGLED, AND,

- (a) THE BOARD MAY EXERCISE THE LIKE POWERS AS IT MAY EXERCISE UNDER SUBSECTION 5 AND 7 WITH RESPECT TO THE SALE OF A BUSINESS UNDER THIS SECTION;
- (b) THE NEW OR ENLARGED MUNICIPALITY HAS THE LIKE RIGHTS AND OBLIGATIONS AS A PERSON TO WHOM A BUSINESS IS SOLD UNDER THIS SECTION AND WHO INTERMINGLES THE EMPLOYEES OF ONE OF HIS BUSINESSES WITH THOSE OF ANOTHER OF HIS BUSINESSES; AND
- (c) ANY TRADE UNION CONCERNED HAS THE LIKE RIGHTS AND OBLIGATIONS AS IT WOULD HAVE IN THE CASE OF THE INTERMINGLING OF EMPLOYEES IN TWO OR MORE BUSINESSES UNDER THIS SECTION

9. AS CAN BE SEEN FROM THE PROVISIONS OF SECTION 47(A)(10) (B), THE LEGISLATURE HAS SPECIFICALLY PROVIDED THAT THE NEW OR ENLARGED MUNICIPALITY, IN THIS CASE THE APPLICANT, HAS THE LIKE RIGHTS AND OBLIGATIONS AS A PERSON TO WHOM A BUSINESS IS SOLD UNDER THIS SECTIONS AND WHO INTERMINGLES THE EMPLOYEES OF ONE OF HIS BUSINESSES WITH THOSE OF ANOTHER OF HIS BUSINESSES. SINCE SECTION 47A(10) "DEEMS" THAT THERE HAS BEEN AN INTERMINGLING OF EMPLOYEES OF THE SCHOOLS OVER WHICH THE APPLICANT HAS JURISDICTION, IT THEREFORE FOLLOWS THAT SUCH INTERMINGLED EMPLOYEES ARE INDISTINGUISHABLE FOR THE PURPOSE OF COLLECTIVE BARGAINING. THE BOARD MUST THEREFORE MAKE ITS DETERMINATION IN THIS MATTER PURSUANT TO THE PROVISIONS OF SECTION 47A(5) AND SECTION 47A(7) OF THE LABOUR RELATIONS ACT.

10. UNDER SECTION 47A(5) THE BOARD MAY, AMONG OTHER THINGS, DETERMINE WHETHER THE EMPLOYEES CONCERNED CONSTITUTE ONE OR MORE APPROPRIATE BARGAINING UNITS. IN THE ABSENCE OF THIS PROVISION, IT MIGHT BE ARGUED THAT SINCE THE EMPLOYEES OF A MUNICIPALITY ARE DEEMED TO BE INTERMINGLED, OFFICE EMPLOYEES AND OTHERS MUST ACCORDINGLY BE DEEMED TO BE MELDED WITH AND INDISTINGUISHABLE FROM THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED. HOWEVER, SINCE THE

BOARD HAS JURISDICTION TO DETERMINE WHETHER THE EMPLOYEES CONSTITUTED ONE OR MORE APPROPRIATE BARGAINING UNITS, IT IS OPEN TO THE BOARD TO FOLLOW ITS USUAL PRACTICE OF SEPARATING OFFICE EMPLOYEES FROM OTHER EMPLOYEES. HOWEVER IF WE TOOK THE POSITION THAT EMPLOYEES IN A CERTAIN CLASSIFICATION WERE DISTINGUISHABLE ON A GEOGRAPHIC BASIS WE WOULD THEREBY CAUSE THE LEGISLATIVE DIRECTION, CONTAINED IN SECTION 47A(10), THAT THE EMPLOYEES ARE DEEMED TO HAVE BEEN INTERMINGLED, TO BE MEANINGLESS.

11. AS STATED ABOVE, SINCE THE EMPLOYEES OF THE APPLICANT ARE DEEMED TO HAVE BEEN INTERMINGLED FOR THE PURPOSE OF SECTION 47A, AS FAR AS WE ARE ABLE TO SEE AT THIS TIME IT IS OUR VIEW THAT WE MUST ACCEPT THE INTERMINGLING OF EMPLOYEES AS A FACT. IT ALSO FOLLOWS, AS FAR AS WE ARE ABLE TO SEE AT THIS TIME, THAT FOR COLLECTIVE BARGAINING PURPOSES, THE INTERMINGLED EMPLOYEES IN A PARTICULAR CLASSIFICATION SHOULD NOT BE DISTINGUISHED ON A GEOGRAPHIC BASIS.

12. THE BOARD THEREFORE FINDS THAT ALL EMPLOYEES OF THE APPLICANT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE APPLICANT APPROPRIATE FOR COLLECTIVE BARGAINING.

13. THE NEXT QUESTION TO BE RESOLVED IS WHETHER THE RESULTS OF THE REPRESENTATION VOTE WILL BE DETERMINED BY A MAJORITY OR A PLURALITY OF THE VOTERS. IN THIS CASE, THE VOTERS WERE GIVEN THE THREE CHOICES WHICH ARE ENUMERATED IN PARAGRAPH 2 HEREOF. THE THREE CHOICES MUST BE TREATED EQUALLY AND THEREFORE IT WOULD BE UNFAIR TO DETERMINE THE RESULTS OF THE VOTE IN A MANNER WHICH WOULD WEIGHT ONE OF THE THREE CHOICES.

14. IF THE BOARD WERE TO FIND THAT THE UNION WHICH IS ENTITLED TO BE DECLARED TO BE THE BARGAINING AGENT OF THE APPLICANT'S EMPLOYEES, UNDER THE PROVISIONS OF SECTION 47A(5) OF THE ACT, MUST BE CHOSEN BY A CLEAR MAJORITY OF THE VOTERS, SUCH FINDING WOULD NECESSARILY MEAN THAT THE CHOICE OF "NO UNION" WOULD BE GIVEN A DISTINCT PREFERENCE IN THE VOTE COUNT SINCE THE VOTERS HAVE BEEN OFFERED THREE CHOICES IN THE INSTANT CASE.

15. HOWEVER, IF THE WINNING CHOICE IN THE REPRESENTATION VOTE IS DETERMINED BY ASCERTAINING WHICH CHOICE RECEIVES THE MOST VOTES, THEN A PLURALITY OF VOTES WILL DETERMINE THE RESULT. THIS LATTER SYSTEM IS THE ONE USED IN FEDERAL, PROVINCIAL AND MUNICIPAL ELECTIONS WHERE VOTERS ARE OFFERED MULTIPLE CHOICES. NO CHOICE IS GIVEN UNFAIR ADVANTAGE WHERE THE RESULT IF DETERMINED BY A PLURALITY.

16. WHILE IT IS RECOGNIZED THAT IN CERTIFICATION CASES SECTION 7(3) OF THE ACT REQUIRES THAT THE BOARD MUST BE SATISFIED THAT MORE THAN 50 PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE WERE CAST IN FAVOUR OF THE TRADE UNION BEFORE SUCH TRADE UNION CAN BE CERTIFIED, NO SUCH PROVISION IS CONTAINED IN SECTION 47A OF THE ACT. WHILE SECTION 47A(7) AUTHORIZES THE BOARD TO "HOLD SUCH REPRESENTATION VOTES AS IT DEEMS APPROPRIATE", NO LEGISLATIVE DIRECTION IS CONTAINED IN THAT SECTION WHICH REQUIRES THE RESULTS OF THE VOTE TO BE DETERMINED BY A MAJORITY.

17. AT THE HEARING IN THIS MATTER, THE PARTIES WERE AGREED, FOR THE REASONS OUTLINED ABOVE, THAT THE FAIREST WAY TO DETERMINE THE RESULT OF THE REPRESENTATION VOTE CONDUCTED IN THIS CASE WOULD BE ON THE BASIS OF A PLURALITY OF THE VOTES CAST. AS AN ALTERNATE SUGGESTION, THE PARTIES PROPOSED THAT "RUN OFF" VOTES BE CONDUCTED. IN A "RUN OFF" VOTE THE CHOICE OFFERED TO THE VOTERS WHICH RECEIVES THE LOWEST NUMBER OF VOTES WOULD BE DROPPED FROM THE AVAILABLE CHOICES IN THE NEXT VOTE HELD UNTIL FINALLY ONE OF THE CHOICES RECEIVES A MAJORITY OF THE VOTES. THE PARTIES IN THIS CASE OBJECTED TO SUCH PROCEDURE ON THE BASIS THAT IT WAS TIME CONSUMING AND EXPENSIVE. IN ADDITION, IT WAS SUGGESTED THAT EMPLOYEES WOULD BECOME DISENCHANTED WITH SUCH A PROLONGED PROCEDURE TO DETERMINE WHICH BARGAINING AGENT, IF ANY, REPRESENTED THEM.

18. HAVING CONSIDERED ALL THE FACTORS OUTLINED ABOVE AND THE REPRESENTATIONS OF THE PARTIES, WE FIND THAT SINCE THE VOTERS IN THIS MATTER WERE GIVEN EVERY CHOICE WHICH WAS AVAILABLE TO THEM, AND HAVING REGARD TO THE FACT THAT THE PARTIES WERE IN AGREEMENT AS TO THE MANNER IN WHICH THE RESULT SHOULD BE DETERMINED, THE RESULT OF THE REPRESENTATION VOTE CONDUCTED IN THIS CASE WILL BE DETERMINED ON THE BASIS OF WHICH CHOICE IS PREFERRED BY THE EMPLOYEES AND ACCORDINGLY A PLURALITY OF VOTES WILL BE NECESSARY TO DETERMINE THE RESULT.

19. THE BOARD ACCORDINGLY DIRECTS THAT THE REGISTRAR CAUSE THE BALLOTS CAST IN THE REPRESENTATION VOTE TO BE COUNTED AND REPORT TO THE BOARD.

20. IT SHOULD BE SPECIFICALLY NOTED THAT THE BOARD IN THIS CASE DIRECTED THAT THE BALLOT SHOULD OFFER THE VOTERS THE CHOICE OF WHETHER OR NOT THEY WISHED TO BARGAIN COLLECTIVELY THROUGH THE CUSTODIANS AND MAINTENANCE ASSOCIATION OR THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 269 OR NO TRADE UNION. THE THREE CHOICES OFFERED ON THE BALLOT WERE PUT TO THE VOTERS IN THIS CASE FOR THE FIRST TIME ON AN EXPERIMENTAL BASIS IN ORDER TO PERMIT THE BOARD TO FULLY CANVASS THIS SYSTEM. HOWEVER, WHILE THE PARTIES

IN THE INSTANT CASE WERE IN AGREEMENT AS TO THE MANNER IN WHICH THE RESULT SHOULD BE DETERMINED, THE BOARD HAS HAD THE OPPORTUNITY TO CONSIDER THE MANY PROBLEMS WHICH MAY BE ENCOUNTERED IF THIS SYSTEM WERE FOLLOWED IN OTHER CASES UNDER SECTION 47A OF THE ACT. IN OTHER CASES UNDER SECTION 47A OF THE ACT DIFFERENT FACT SITUATIONS MAY BE ENCOUNTERED AND THERE MAY BE NO AGREEMENT BETWEEN THE PARTIES ON THE PROCEDURE TO BE FOLLOWED. HAVING GIVEN A GREAT DEAL OF THOUGHT TO THE PROBLEMS WHICH MIGHT BE ENCOUNTERED, THE BOARD IS OF OPINION THAT THE DISADVANTAGES INVOLVED IF THE BOARD WERE TO ADOPT THIS SYSTEM AS A GENERAL PRACTICE FAR OUTWEIGH ANY ADVANTAGES THAT MAY FLOW FROM THE SYSTEM AND THE BOARD WISHES TO PLACE ITSELF ON RECORD THAT IT DOES NOT INTEND TO FOLLOW THIS SYSTEM IN FUTURE APPLICATIONS UNDER SECTION 47A.

INDEXED ENDORSEMENT - SECTION 79A

15999-69-M: THE CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 101 (TRADE UNION) v. BECKER MILK COMPANY LIMITED (EMPLOYER).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: ROBERT SOULIERE FOR THE TRADE UNION, J.P. SANDERSON AND A. MAGI FOR THE EMPLOYER.

DECISION OF THE BOARD: MAY 1, 1969.

1. THIS IS AN APPLICATION MADE PURSUANT TO SECTION 79A OF THE LABOUR RELATIONS ACT. THE TRADE UNION (HEREINAFTER REFERRED TO AS UNION) ON MARCH 18TH, 1969 REQUESTED THAT THE MINISTER APPOINT A CONCILIATION OFFICER TO CONFER WITH LOCAL 101 AND THE EMPLOYER (HEREINAFTER REFERRED TO AS COMPANY). THE SOLICITOR FOR THE COMPANY ADVISED THE MINISTER BY LETTER DATED MARCH 21ST, 1969 THAT THE COMPANY WAS A PARTY TO A COLLECTIVE AGREEMENT WITH THE UNION WHICH HAD APPROXIMATELY ONE YEAR TO RUN PRIOR TO ITS TERMINATION. COUNSEL ACCORDINGLY SUBMITS THAT THE APPLICATION OF THE UNION FOR CONCILIATION SERVICES IS UNTIMELY. THE QUESTION REFERRED TO THE BOARD IS WHETHER IN ALL THE CIRCUMSTANCES THE MINISTER HAS THE POWER TO APPOINT A CONCILIATION OFFICER.

2. THE PARTIES ENTERED INTO A COLLECTIVE AGREEMENT DATED FEBRUARY 21ST, 1966 BY WHICH THE COMPANY RECOGNIZED THE UNION AS THE BARGAINING AGENT FOR ALL STATIONARY ENGINEERS AND PERSONS REGULARLY ENGAGED AS THEIR HELPERS EMPLOYED BY THE COMPANY AT ITS

PLANT AT 671 WARDEN AVENUE, SCARBOROUGH, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER. THE TERMINATION CLAUSE PROVIDES THAT THE AGREEMENT IS TO REMAIN IN FORCE FOR A PERIOD OF ONE YEAR FROM THE DATE OF EXECUTION AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE.

3. THE EVIDENCE OF ARVI MAGI, THE TREASURER OF THE COMPANY, IS THAT IN LATE JANUARY OR EARLY FEBRUARY, 1967, THE COMPANY RECEIVED BY MAIL FROM THE UNION A DOCUMENT CONTAINING PROPOSALS FOR THE REVISION OF THE 1966 COLLECTIVE AGREEMENT. MAGI TESTIFIED THAT TWO MEETINGS FOLLOWED, ATTENDED BY REPRESENTATIVES OF THE COMPANY AND A PERSON BY THE NAME OF HEALY, A REPRESENTATIVE OF THE UNION. ALSO IN ATTENDANCE AT THESE MEETINGS WAS CHARLES MAYNARD, A STATIONARY ENGINEER IN THE EMPLOY OF THE COMPANY WHO WAS IN THE BARGAINING UNIT. BOTH MAGI AND MAYNARD TESTIFIED THAT THE PARTIES REACHED AN ORAL AGREEMENT ON THE TERMS OF THE REVISION TO THE 1966 AGREEMENT. MAYNARD'S EVIDENCE IS THAT IMMEDIATELY FOLLOWING THE SECOND MEETING, AT WHICH THE ORAL AGREEMENT WAS REACHED, HE AND HEALY SECURED THE CONSENT TO THE TERMS OF THE ONLY OTHER STATIONARY ENGINEER IN THE BARGAINING UNIT.

4. MAGI'S EVIDENCE IS THAT THE COMPANY THEREUPON DRAFTED A FORM OF COLLECTIVE AGREEMENT DATED FEBRUARY 22ND, 1967, INCORPORATING THE TERMS AND CONDITIONS OF EMPLOYMENT WHICH HAD BEEN ORALLY AGREED UPON BY THE PARTIES. MAYNARD TESTIFIED THAT, WITH ONE EXCEPTION, THE FORM OF THE COLLECTIVE AGREEMENT REFLECTED THE ORAL AGREEMENT. COPIES OF THE AGREEMENT OF FEBRUARY 22ND, 1967 WERE FORWARDED TO THE UNION. THE EVIDENCE IS, HOWEVER, THAT THE AGREEMENT WAS NEVER EXECUTED BY THE UNION. ACCORDING TO ROBERT SOULIERE, A REPRESENTATIVE OF THE UNION WHO APPEARED AT THE BOARD HEARING IN THIS MATTER, THE UNION HAS NO RECORD OF THE COLLECTIVE AGREEMENT OR OF ITS RATIFICATION. IT APPEARS, HOWEVER, THAT ALL OF THE TERMS AND CONDITIONS OF THE UNSIGNED AGREEMENT OF FEBRUARY 22ND, 1967 HAVE BEEN COMPLIED WITH BY THE COMPANY AND THE UNION.

5. IN THE CANADA MACHINERY CORPORATION LIMITED CASE, 61 CLLC 918, AFTER CITING A NUMBER OF AUTHORITIES ON THE LAW OF CONTRACTS, THE BOARD STATED AT 919:

PRIMA FACIE, THEREFORE, IT WOULD APPEAR THAT WHERE THE EXPRESSION "AGREEMENT IN WRITING" IS USED UNDER SECTION 1(1)(C), IT MEANS AN EXECUTED OR SIGNED WRITING--EXECUTED OR SIGNED BY ALL PARTIES. A CAREFUL STUDY OF THE STATUTE DOES NOT REVEAL ANY SECTION WHICH INDICATES THAT A CONTRARY CONSTRUCTION SHOULD BE PLACED ON THE SECTION IN QUESTION. ***

IN THE RESULT, THEREFORE, WE ARE OF THE OPINION THAT A COLLECTIVE AGREEMENT WITHIN THE MEANING OF THE LABOUR RELATIONS ACT MEANS AN AGREEMENT IN WRITING EXECUTED OR SIGNED BY THE PARTIES TO THE AGREEMENT. ...

6. IN THE FOUNDATION COMPANY OF CANADA CASE, 57 CLLC 1649, THE BOARD MADE THE FOLLOWING STATEMENT WHICH IS RELEVANT TO THE FACT SITUATION BEFORE US IN THE INSTANT CASE AT 1651:

THE MOST THAT CAN BE SAID FOR THE EVIDENCE BEFORE THE BOARD IS THAT IT INDICATES THAT WHILE THE RESPONDENT MAY HAVE IN FACT OBSERVED SOME OF THE TERMS OF THE VARIOUS AGREEMENTS IT WAS NOT LEGALLY BOUND TO DO SO. IN THE OPINION OF THE BOARD MERE OBSERVANCE OF AN AGREEMENT BY A PERSON NOT A PARTY TO IT IS NOT SUFFICIENT TO MAKE THAT PERSON BOUND BY IT. THERE MUST BE SOMETHING MORE-- SOMETHING EVIDENCING AN AGREEMENT BETWEEN THAT PERSON AND ONE OF THE PARTIES TO THE EXISTING AGREEMENT. WHILE IT NEED NOT NECESSARILY BE A FORMAL AGREEMENT IT MUST BE IN WRITING; IT MAY, FOR EXAMPLE, BE FOUND IN AN EXCHANGE OF CORRESPONDENCE BETWEEN THE PARTIES.

7. BASED ON THE PRINCIPLES SET OUT IN THE ABOVE QUOTED DECISIONS OF THE BOARD, WE FIND THAT THE UNSIGNED DOCUMENT DATED FEBRUARY 22ND, 1967 IS NOT A COLLECTIVE AGREEMENT WITHIN THE MEANING OF THE ACT. WE THEREFORE FIND THAT THE APPLICATION MADE BY THE UNION FOR CONCILIATION SERVICES IS TIMELY.

8. ACCORDINGLY, OUR ANSWER TO THE REFERENCE IS THAT THE MINISTER DOES HAVE THE POWER UNDER THE ACT TO APPOINT A CONCILIATION OFFICER.

INDEXED ENDORSEMENT - JURISDICTIONAL DISPUTE

16086(A)-69-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 506 AND LOCAL 527 (COMPLAINANTS) v. OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL 124 AND BEMAC PROTECTIVE COATING LIMITED (RESPONDENTS).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

DECISION OF THE BOARD: MAY 7, 1969.

1. THIS IS A COMPLAINT MADE UNDER SECTION 66 OF THE LABOUR RELATIONS ACT. THE SUBJECT MATTER OF THE DISPUTE IS WORK IN CONNECTION WITH PREPARATION, APPLICATION AND FINISHING OF ASPHALT,

PLASTIC OR MASTIC PRODUCTS BEING DONE BY THE RESPONDENT COMPANY AT THE DATA CENTER PROJECT LOCATED AT OTTAWA. SPECIFICALLY, BOTH THE COMPLAINANT LOCALS OF THE LABOURERS' UNION AND THE RESPONDENT LOCAL OF THE PLASTERERS' AND CEMENT MASONS' UNION CLAIM THAT THE INSTALLATION, BOTH VERTICAL AND FLAT, OF HOT LAID MASTIC PRODUCTS, ASPHALTIC FLOORING, WATER PROOFING AND TANKING, IS WORK WHICH FALLS UNDER THE JURISDICTION OF THEIR RESPECTIVE TRADES.

2. THE BOARD HELD A HEARING ON APRIL 30TH, 1969 FOR THE PURPOSE OF CONSULTING WITH THE PARTIES, PURSUANT TO SECTION 66 (2) OF THE ACT, ON THE REQUEST OF THE COMPLAINANT THAT THE BOARD ISSUE AN INTERIM ORDER ASSIGNING THE WORK IN DISPUTE TO MEMBERS OF THE COMPLAINANTS. AT THE OUTSET OF THAT HEARING, COUNSEL FOR THE RESPONDENT UNION CHALLENGED THE JURISDICTION OF THE BOARD TO ENTERTAIN THE COMPLAINT.

3. THE EVIDENCE IS THAT THE DISPUTE AROSE ON APRIL 17TH, 1969, WHEN JEAN GUY DENIS, AN OFFICIAL OF THE RESPONDENT UNION, ADVISED THE RESPONDENT COMPANY THAT HE WANTED MEMBERS OF THE PLASTERERS' AND CEMENT MASONS' UNION TO DO THE WORK THAT IS THE SUBJECT OF THE INSTANT COMPLAINT. THE TWO EMPLOYEES WHO WERE PERFORMING THE WORK, AND HAD BEEN DOING SO FOR SOME TIME, IN FACT, WERE MEMBERS OF BOTH THE LABOURERS' UNION, LOCAL 506 AND THE PLASTERERS' AND CEMENT MASONS' UNION, LOCAL 172.

4. COUNSEL FOR THE RESPONDENT UNION SUBMITTED THAT UNDER SECTION 66(1) OF THE ACT, THE BOARD'S JURISDICTION IN WORK ASSIGNMENT DISPUTES IS CONTINGENT UPON THE EMPLOYER HAVING IN HIS EMPLOY AT THE TIME THE DISPUTE AROSE MEMBERS OF BOTH COMPETING UNIONS. IN SUPPORT OF THIS PROPOSITION, COUNSEL CITED THE DECISIONS OF THE HIGH COURT IN THE CANADIAN PITTSBURGH INDUSTRIES LIMITED v. H. ORLIFFE ET AL. CASE, 61 CLLC 328; REGINA v. ONTARIO LABOUR RELATIONS BOARD EX PARTE BENNETT & WRIGHT CASE, 68 CLLC 11,597; REGINA v. ONTARIO LABOUR RELATIONS BOARD EX PARTE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 736 CASE, 68 CLLC 11,732. COUNSEL ARGUES THAT WHILE THE EMPLOYEES IN QUESTION ARE MEMBERS OF LOCAL 172 OF THE PLASTERERS' AND CEMENT MASONS' UNION, THIS LOCAL IS AN ENTIRELY SEPARATE ENTITY FROM THE RESPONDENT, LOCAL 124. COUNSEL ACCORDINGLY SUBMITS THAT THE CONDITIONS PRECEDENT WHICH WOULD ALLOW THE BOARD TO TAKE JURISDICTION ARE LACKING IN THE INSTANT CASE.

5. WE DO NOT DISPUTE THE CONTENTION OF COUNSEL THAT THE ABOVE CITED DECISIONS STAND FOR THE PRINCIPLE WHICH HE ADVANCED IN REGARD TO THE INTERPRETATION OF SECTION 66(1) OF THE ACT. FURTHER, WE DO NOT DISAGREE THAT COUNSEL'S ARGUMENT THAT LOCALS OF THE SAME PARENT UNION ARE SEPARATE ENTITIES. IN OUR VIEW,

HOWEVER, THE FACT SITUATION BEFORE THE BOARD IN THE INSTANT COMPLAINT IS CLEARLY DIFFERENT FROM THOSE WHICH WERE BEFORE THE COURT IN THE CITED DECISIONS. HERE, UNLIKE THE EARLIER CASES, THE EMPLOYER HAD IN HIS EMPLOY, AT THE RELEVANT TIME, PERSONS WHO HAD DUAL MEMBERSHIP IN LOCALS OF BOTH THE LABOURERS' UNION AND THE PLASTERERS' AND CEMENT MASONS' UNION. BY VIRTUE OF THIS FACT, WE FIND THAT THE RESPONDENT COMPANY HAD EMPLOYEES IN THE TWO TRADES THAT ARE INVOLVED IN THE DISPUTE. THE FACT THAT THE EMPLOYEES IN THE TWO TRADES WERE ONE AND THE SAME PERSONS IN NO WAY DETRACTS FROM THIS FINDING.

6. SECTION 66(1) PROVIDES THAT THE BOARD MAY INQUIRE INTO A COMPLAINT THAT A TRADE UNION OR OFFICIAL THEREOF WAS OR IS REQUIRING AN EMPLOYER TO ASSIGN PARTICULAR WORK TO EMPLOYEES IN A PARTICULAR TRADE UNION RATHER THAN TO EMPLOYEES IN ANOTHER TRADE UNION OR THAT AN EMPLOYER WAS OR IS ASSIGNING WORK TO EMPLOYEES IN A PARTICULAR TRADE UNION RATHER THAN TO EMPLOYEES IN ANOTHER TRADE UNION. BECAUSE OF THE FACTS OF THE CITED CASES, THE COURT'S INTERPRETATION OF SECTION 66(1) WAS DIRECTED TO THESE PARTICULAR PROVISIONS.

7. SECTION 66(1) ALSO PROVIDES, HOWEVER, THAT THE BOARD MAY INQUIRE INTO A COMPLAINT THAT A TRADE UNION OR OFFICIAL THEREOF IS REQUIRING AN EMPLOYER TO ASSIGN PARTICULAR WORK TO EMPLOYEES IN A PARTICULAR TRADE, CRAFT OR CLASS RATHER THAN TO EMPLOYEES IN ANOTHER TRADE, CRAFT OR CLASS. BY ANALOGY TO THE COURT'S INTERPRETATION OF THE ABOVE MENTIONED PROVISIONS OF SECTION 66(1), IT LOGICALLY FOLLOWS THAT THE BOARD HAS JURISDICTION PROVIDED THE EMPLOYER HAS IN HIS EMPLOY EMPLOYEES IN THE TWO COMPETING TRADES OR CRAFTS. THAT STATE OF AFFAIRS PREVAILED AT THE TIME THE DISPUTE AROSE IN THE INSTANT COMPLAINT. IT WAS ON THIS BASIS THAT THE BOARD RULED IT HAD JURISDICTION TO DEAL WITH THE COMPLAINT.

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION -

CERTIFICATION

15765-68-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,
LOCAL UNION 1687 (APPLICANT) v. K. V. C. ELECTRIC LIMITED
(RESPONDENT).

BEFORE: G.W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: L. POPOVICH, M. LAFOREST AND GILBERT DICAIRE FOR THE APPLICANT; R.D. PERKINS AND FERN COUSINEAU FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 30, 1969.

1. THIS MATTER WAS PUT ON FOR HEARING IN NORTH BAY IN ORDER TO PERMIT THE RESPONDENT TO ADDUCE EVIDENCE WITH RESPECT TO ALLEGATIONS MADE BY IT IN CONNECTION WITH MEMBERSHIP EVIDENCE FILED BY THE APPLICANT. THESE ALLEGATIONS HAD BEEN MADE PRIOR TO THE ISSUING OF THE BOARD'S CERTIFICATE. THE BOARD CONDUCTED ITS USUAL INVESTIGATION, THAT IS, IT INTERVIEWED THE EMPLOYEES WHOSE MEMBERSHIP EVIDENCE WAS QUESTIONED AND FOLLOWING THOSE INTERVIEWS IT FOUND THAT FURTHER INQUIRIES WERE NOT NECESSARY BY MEANS OF A FORMAL HEARING. ACCORDINGLY, THE APPLICANT TRADE UNION WAS CERTIFIED. THE RESPONDENT THEN REQUESTED THE BOARD TO INTERVIEW OTHER PERSONS. THIS WAS REFUSED BUT THE RESPONDENT WAS INFORMED THAT THE BOARD WAS PREPARED TO HEAR ITS EVIDENCE AND REPRESENTATIONS IN THE MATTER IF IT SO DESIRED. THE HEARING IN NORTH BAY FOLLOWED.

2. THE GIST OF THE RESPONDENT'S ALLEGATIONS IS THAT AT THE TIME GARY SEQUIN, RENE GAGNON AND JACQUES LAFOREST SIGNED MEMBERSHIP CARDS FOR THE APPLICANT UNION THEY DID NOT PAY ANY MONEY ON THEIR OWN BEHALF TOWARDS THE INITIATION FEES OR DUES. IN SUPPORT OF ITS ALLEGATIONS THE RESPONDENT CALLED TWO WITNESSES, MRS. CRONKITE AND LARRY MONTCALM, WHO TESTIFIED THAT THE THREE EMPLOYEES IN QUESTION HAD CERTAIN CONVERSATIONS WITH THEM LEADING TO THE INFERENCE THAT THEY HAD NOT PAID MONEY AT THE TIME THEY SIGNED THE CARDS. THE THREE EMPLOYEES IN QUESTION WERE ALSO CALLED BY THE RESPONDENT AND EACH FIRMLY MAINTAINED THAT AT THE TIME THEY SIGNED THE CARDS THEY HAD PAID \$1.00 TO THE UNION ORGANIZER, MR. POPOVICH. THE APPLICANT TRADE UNION CALLED TWO WITNESSES, EACH OF WHOM TESTIFIED THAT THEY WERE PRESENT AT THE MEETING AT WHICH THE THREE EMPLOYEES CLAIMED THAT THEY HAD PAID THE \$1.00 TO MR. POPOVICH. THE FIRST OF THESE TWO WITNESSES, MARCEL LAFOREST, TESTIFIED THAT HE SAW RENE GAGNON AND JACQUES LAFOREST HAND THEIR \$1.00 TO POPOVICH BUT THAT HE COULD NOT RECALL SEEING GARY SEQUIN DOING SO. THE SECOND WITNESS, GILBERT DICAIRE, TESTIFIED THAT HE SAW THE THREE PERSONS IN QUESTION PAY THEIR \$1.00. NEITHER OF THESE WITNESSES WAS CROSS-EXAMINED AND WE HAVE NO REASON WHATSOEVER TO DOUBT THEIR TESTIMONY WHICH WAS GIVEN IN A CLEAR, FIRM AND STRAIGHTFORWARD MANNER.

3. THEIR EVIDENCE ALONE, IN OUR VIEW, IS SUFFICIENT TO DISPOSE OF THE ALLEGATIONS MADE BY THE RESPONDENT. THE EVIDENCE OF LARRY MONTCALM WAS MERELY THAT GARY SEQUIN SAID TO HIM, "WE HAVEN'T JOINED YET, ALL WE HAVE DONE IS SIGN". MONTCALM DID NOT ASK SEGUIN IF HE HAD PAID ANY MONEY. IF THE STATEMENT WAS IN FACT MADE BY SEQUIN, AND HE DOES NOT ADMIT IT, IT IS EASILY EXPLAINABLE BY THE

FACT THAT SEQUIN HAD NOT JOINED THE UNION BUT HAD MERELY SIGNED AN APPLICATION FOR MEMBERSHIP. MRS. CRONKITE'S TESTIMONY IS COMPLICATED BY THE FACT THAT SHE ATTRIBUTES CERTAIN STATEMENTS TO RENE GAGNON IN CONVERSATIONS WITH HER. SHE ADMITS, HOWEVER, THAT SHE CANNOT SPEAK FRENCH AND THAT GAGNON SPOKE IN FRENCH OR MADE SOME OF THE STATEMENTS IN FRENCH AND THESE WERE TRANSLATED FOR HER BY JACQUES LAFOREST. ONCE AGAIN THE STATEMENTS ALLEGED TO HAVE BEEN MADE REFERRED TO UNION DUES. BUT THE DOLLAR CLAIMED TO HAVE BEEN PAID DID NOT CONSTITUTE UNION DUES IN THE ORDINARY SENSE OF THAT WORD BUT \$1.00 PAYMENT ON BEHALF OF INITIATION FEES. IN OTHER WORDS, IF THE CONVERSATIONS BETWEEN GAGNON, LAFOREST AND MRS. CRONKITE TOOK PLACE, THERE COULD EASILY HAVE BEEN A MISUNDERSTANDING ON THE PART OF MRS. CRONKITE.

4. AS WE NOTED ABOVE, WE HAVE NO REASON WHATSOEVER TO DOUBT THE TESTIMONY OF DICAIRES AND MARCEL LAFOREST, THE WITNESSES CALLED BY THE APPLICANT UNION. WE ACCORDINGLY FIND THAT THE RESPONDENT HAS FAILED TO CAST DOUBT ON THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT IN SUPPORT OF THE APPLICATION AND ACCORDINGLY CONFIRM OUR DECISION IN THIS MATTER DATED MARCH 17, 1969.

15772-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) v. THE FALK CORPORATION OF CANADA LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS
E. BOYER AND R.W. TEAGLE.

DECISION OF THE BOARD: MAY 29, 1969.

1. THE RESPONDENT REQUESTS THE BOARD TO REVIEW ITS DECISION OF MARCH 27, 1969, PURSUANT TO THE PROVISIONS OF SECTION 79(1) OF THE LABOUR RELATIONS ACT.

2. THE RESPONDENT SUBMITS THAT THE BOARD PROCEEDED UPON AN ERROR IN LAW CONCERNING THE EVIDENCE GIVEN BY NORMAN GARBUZZ. THE RESPONDENT STATES THAT IN PARAGRAPHS 2 AND 8 OF THE BOARD'S DECISION, THE BOARD APPEARS TO HAVE INFERRRED FROM ITS DISBELIEF OF MR. GARBUZZ'S TESTIMONY THAT SUCH DISBELIEF CREATED AN INFERENCE THAT THE PETITION ORIGINATED FROM MANAGEMENT.

3. PARAGRAPHS 2 AND 8 OF THE BOARD'S DECISION READ AS FOLLOWS:

¶ 2. THE PETITIONERS WERE REPRESENTED BY NORMAN GARBUZZ WHO TESTIFIED ON THEIR BEHALF. HE STATED THAT HE HAD ORIGINATED THE PETITION AND SWORE THAT HE HAD HAD NO CONVERSATION WITH MANAGEMENT WITH RESPECT TO IT. THE EVIDENCE OF OTHER WITNESSES CONTRADICTS THIS STATEMENT AND CLEARLY ESTABLISHES THAT GARBUZZ DISCUSSED THE WHOLE SITUATION WITH MR. MACDONALD, VICE-PRESIDENT OF SALES, ON THE MORNING THAT THE PETITION WAS SIGNED. MACDONALD COULD NOT REMEMBER WHERE THIS MEETING WITH GARBUZZ TOOK PLACE, BUT RECOLLECTED THAT GARBUZZ TOLD HIM HE WAS HAVING A PETITION SIGNED AND NEEDED SOME ASSURANCES FOR THE EMPLOYEES BEFORE THEY WOULD SIGN THE PETITION. MACDONALD SAID THAT AT THIS MEETING HE GAVE NO SPECIFIC PROMISES, BUT SAID THAT THE COMPANY WOULD REVIEW ALL MATTERS.

¶ 8. THE BOARD IS NOT SATISFIED, ON THE BASIS OF ALL THE EVIDENCE, WITH THE TRUTH OF GARBUZZ'S STATEMENTS WITH RESPECT TO THE ORIGINATION OF THE PETITION. IF HE WAS NOT UNTRUTHFUL WITH RESPECT TO THAT, HE WAS AT LEAST CAREFUL NOT TO DISCLOSE MATTERS VITAL TO A PROPER CONSIDERATION OF THE ORIGINATION OF THE DOCUMENTS. THIS IN ITSELF IS FATAL TO THE PETITION. FURTHERMORE, THE INVOLVEMENT OF MANAGEMENT IN THE WHOLE SCHEME WHETHER DELIBERATE OR BY INVITATION WAS SUCH AS TO VITIATE THE PETITION AS A DOCUMENT REPRESENTING THE FREE AND VOLUNTARY CHOICE OF THOSE WHO SIGNED IT. WE, THEREFORE, FIND THE PETITION DOES NOT CAST DOUBT ON THE EVIDENCE OF MEMBERSHIP FILED BY THE RESPONDENT SO AS TO CAUSE THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

4. SECTION 48 OF THE BOARD'S RULES OF PROCEDURE DEALS WITH EVIDENCE OF REPRESENTATION INCLUDING WHAT ARE REFERRED TO AS STATEMENTS OF DESIRE OR PETITIONS BY EMPLOYEES AFFECTED BY AN APPLICATION. SUBSECTION 5 OF SECTION 48 IS PARTICULARLY RELEVANT TO THE PRESENT CIRCUMSTANCES. IT PROVIDES AS FOLLOWS:

SEC. 48 (5) THE BOARD MAY DISPOSE OF THE APPLICATION WITHOUT CONSIDERING THE STATEMENT OF DESIRE OF ANY EMPLOYEE WHO FAILS TO APPEAR IN PERSON OR BY A REPRESENTATIVE AND ADDUCE EVIDENCE THAT INCLUDES TESTIMONY IN THE PERSONAL KNOWLEDGE AND OBSERVATION OF THE WITNESS AS TO,

(a) THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE STATEMENT OF DESIRE; AND

(B) THE MANNER IN WHICH EACH SIGNATURE
ON THE STATEMENT OF DESIRE WAS
OBTAINED.

5. SIMILAR INFORMATION AND THE SAME CAUTION ARE SET OUT IN FORM 5, WHICH IS THE BOARD'S NOTICE TO EMPLOYEES OF APPLICATION FOR CERTIFICATION. IN THE INSTANT CASE, THE COMPANY NOTIFIED THE BOARD IN THE USUAL WAY THAT THIS FORM HAD BEEN DULY POSTED IN THE PLANT.

6. IN THE FIRST TWO SENTENCES OF PARAGRAPH 8 OF ITS DECISION, THE BOARD INDICATES THAT IT FOUND GARBUZZI'S EVIDENCE UNBELIEVABLE AND EVASIVE ON THE VITAL POINT OF THE ORIGINATION OF THE PETITION. HE, THEREFORE, FAILED TO MEET THE REQUIREMENTS OF THE RULES AND FORM 5 ON A CARDINAL POINT IN ISSUE - A FAILURE WHICH THE BOARD FOUND WAS, IN ITSELF, FATAL TO THE PETITION.

7. IN THE ABSENCE OF THE REQUIRED EVIDENCE OF ORIGINATION, THE BOARD HAD NO ALTERNATIVE BUT TO DISMISS THE PETITION AND IT DID SO FOR THAT REASON AND WITHOUT DRAWING ANY INFERENCES WITH RESPECT TO MANAGEMENT ORIGINATION. IN OTHER WORDS AND WITHOUT WISHING TO APPEAR TO LABOUR THE POINT, THE SITUATION WAS THAT THERE WAS SIMPLY NO CREDIBLE EVIDENCE BEFORE THE BOARD WITH RESPECT TO THE ORIGINATION OF THE PETITION SUCH AS IS REQUIRED BY THE BOARD AND CONCERNING THE NEED FOR WHICH THE RULES AND FORM 5 CAUTION ALL PETITIONERS.

8. IT SEEMS HARDLY NECESSARY TO REMARK THAT IN ANY EVENT, THE BOARD, IN PARAGRAPH 8 OF ITS DECISION, SETS OUT A SECOND AND EQUALY VALID REASON FOR THE REJECTION OF THE PETITION WHICH IS QUITE INDEPENDENT OF THE FIRST AND WHICH IT IS OBVIOUSLY UNNECESSARY TO REPRODUCE HERE.

9. THE RESPONDENT ADVISES THAT EVIDENCE HAS COME TO THE ATTENTION OF MANAGEMENT SINCE THE HEARING BEFORE THE BOARD THAT THE SOLICITATION OF MEMBERSHIP BY THE UNION TOOK PLACE ON COMPANY PREMISES DURING WORKING HOURS. IT, ACCORDINGLY, SUBMITS THAT THIS FACT, IN CONJUNCTION WITH THE FACT THAT THE PETITION WAS SIGNED BY ALL APPLICABLE EMPLOYEES, IS SUFFICIENT TO CREATE SUCH DOUBT AS TO THE DESIRES OF THE EMPLOYEES THAT A VOTE SHOULD BE HELD.

10. THE SOLICITATION OF THE UNION MEMBERSHIP ON COMPANY PREMISES IS NOT IN ITSELF AN OFFENCE UNDER THE LABOUR RELATIONS ACT. IN ADDITION, THE SOLICITATION OF MEMBERSHIP IN SUCH CIRCUMSTANCES IS NOT A MATTER WHICH, STANDING ALONE, THE BOARD WOULD CONSIDER DETRIMENTAL TO THE QUALITY OF THE MEMBERSHIP EVIDENCE SO

AS TO REQUIRE A REPRESENTATION VOTE. THERE IS NOTHING IN THE PRESENT INSTANCE INCLUDING THE ALLEGED PETITION, WHICH CALLS FOR A DIFFERENT CONCLUSION.

11. THE BOARD, THEREFORE, DOES NOT CONSIDER IT ADVISABLE TO RECONSIDER, VARY OR REVOKE ITS SAID DECISION AND THE RESPONDENT'S REQUEST IS DENIED.

15898-68-R: LOCAL UNION 2679 UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. BEAVER LUMBER COMPANY LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS P.J. O'KEEFFE AND J.E.C. ROBINSON.

DECISION OF THE BOARD: MAY 7, 1969.

1. THE RESPONDENT BY LETTER DATED APRIL 29TH, 1969 HAS REQUESTED THE BOARD TO RECONSIDER ITS DECISION DATED APRIL 9TH, 1969 IN THIS MATTER AND VARY THE BARGAINING UNIT DETERMINED BY THE BOARD TO BE APPROPRIATE. THE APPLICANT HAS OPPOSED THE RESPONDENT'S REQUEST.

2. ALL PARTIES APPEARED AT THE HEARING IN THIS MATTER AND THE BOARD ENTERTAINED THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE DESCRIPTION OF THE BARGAINING UNIT. THE RESPONDENT'S REQUEST AS CONTAINED IN ITS LETTER OF APRIL 29TH, 1969 DOES NOT ALLEGE THAT NEW EVIDENCE IS NOW AVAILABLE WHICH WAS NOT AVAILABLE AT THE HEARING IN THIS MATTER.

3. SINCE THE RESPONDENT HAS NOT ALLEGED THAT NEW EVIDENCE IS NOW AVAILABLE TO IT WHICH WAS NOT AVAILABLE AT THE HEARING IN THIS MATTER AND SINCE THE BOARD MADE ITS DETERMINATION OF THE BARGAINING UNIT AFTER GIVING CONSIDERATION TO THE REPRESENTATIONS OF THE PARTIES AT THE HEARING, THE BOARD DOES NOT THEREFORE CONSIDER IT ADVISABLE TO RECONSIDER ITS DECISION DATED APRIL 9TH, 1969.

4. THE REQUEST OF THE RESPONDENT IS THEREFORE DENIED.

16038-69-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. JOHN HARVIE LIMITED (RESPONDENT).

BEFORE: G.W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

DECISION OF THE BOARD: MAY 8, 1969.

1. THE RESPONDENT IN A LETTER DATED MAY 5, 1969 HAS REQUESTED THE BOARD TO CLARIFY ITS DECISION IN THIS MATTER DATED APRIL 28, 1969.

2. WITH RESPECT TO THE FIRST POINT RAISED IN THE RESPONDENT'S LETTER, IT HAS NOT BEEN THE PRACTICE OF THE BOARD TO RECOGNIZE REFRIGERATION MECHANICS AS A TRADE OR CRAFT WITHIN THE MEANING OF SUBSECTION 2 OF SECTION 6 OF THE LABOUR RELATIONS ACT. IN ANY EVENT, THE APPLICANT TRADE UNION COULD NOT QUALIFY AS A TRADE UNION UNDER THE SAID SUBSECTION AND CONSEQUENTLY WOULD NOT BE ENTITLED TO A CRAFT UNIT CONSISTING OF REFRIGERATION MECHANICS. THE APPLICANT BARGAINS ON AN INDUSTRIAL RATHER THAN ON A CRAFT BASIS AND NORMALLY APPLIES FOR CERTIFICATION FOR AN "ALL EMPLOYEES" UNIT. IF THE BOARD HAD FOUND THE APPLICATION TO BE ONE FALLING UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT, THEN THE BARGAINING UNIT WOULD IN FACT HAVE BEEN CONFINED TO THE TRADES OR CLASSIFICATIONS AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION. HOWEVER, SINCE THE BOARD WAS NOT PREPARED TO MAKE SUCH A FINDING, THE CASE WAS TREATED AS ONE FALLING UNDER THE ORDINARY SECTIONS OF THE ACT AND IN SUCH CIRCUMSTANCES THE "ALL EMPLOYEE" UNIT IS THE NORMAL UNIT GRANTED BY THE BOARD.

3. WITH RESPECT TO THE SECOND MATTER RAISED IN THE RESPONDENT'S LETTER OF MAY 5TH, THE BOARD WAS FULLY AWARE OF THE DIFFERENCES IN THE APPLICANT'S AND THE RESPONDENT'S PROPOSED BARGAINING UNITS. HOWEVER, IT WAS CLEAR FROM BOTH PARTIES THAT THERE WERE IN FACT ONLY TWO PERSONS INVOLVED IN THE APPLICATION AND, REGARDLESS OF WHICH DESCRIPTION WAS USED, THE EFFECT WOULD BE THE SAME.

4. AS TO THE LAST PARAGRAPH OF THE RESPONDENT'S LETTER, THE UNIT AS DESCRIBED WOULD CERTAINLY INCLUDE FUTURE EMPLOYEES. IF THE RESPONDENT CUSTOMARILY EMPLOYS CLASSIFICATIONS OR TRADES OTHER THAN REFRIGERATION MECHANICS OR IF THE RESPONDENT CUSTOMARILY EMPLOYS A GREATER NUMBER OF REFRIGERATION MECHANICS THAN TWO, THEN THE BOARD MAY BE PREPARED TO CONSIDER THE IMPLICATIONS OF THESE NEW FACTS. HOWEVER, THERE IS NO SUGGESTION IN THE MATERIAL BEFORE US AT THE PRESENT TIME THAT SUCH IS THE CASE AND, ACCORDINGLY, WE ARE NOT DISPOSED TO VARY OR AMEND OUR DECISION DATED APRIL 28TH, 1969 AT THIS TIME.

EXCERPT FROM DECISION IN CONSTRUCTION INDUSTRY CASE

16019-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. ESAM CONSTRUCTION LIMITED (RESPONDENT).

4. THE BOARD HAS NOW CONSIDERED THE REPORT OF THE EXAMINER DATED MAY 9, 1969 TOGETHER WITH THE REPRESENTATIONS OF THE PARTIES IN CONNECTION THEREWITH. THE BOARD FINDS THAT GREGORIS KABOURIS WAS NOT AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION AND, ACCORDINGLY, IS NOT INCLUDED IN THE BARGAINING UNIT FOR PURPOSES OF THE COUNT (SEE KEystone Contractors Limited Case, O.L.R.B. MONTHLY REPORT, FEBRUARY 1966, p. 821). ALTHOUGH THE APPLICANT ALLEGED THAT THREE OTHER PERSONS, NAMELY, HAZINIKOLAOU, NIKOLOPOULOS AND PRASINIS, WERE NOT AT WORK ON THAT DATE, THERE IS NO EVIDENCE BEFORE THE BOARD TO SUSTAIN THIS CLAIM AND, ACCORDINGLY, THE BOARD FINDS THAT THESE THREE EMPLOYEES SHOULD BE INCLUDED ON THE LIST OF EMPLOYEES AT WORK ON APRIL 16, 1969, THE DATE OF THE MAKING OF THE APPLICATION.

5. THE APPLICANT ALSO CHALLENGED THE INCLUSION ON THE LIST OF FOUR PERSONS, NAMELY, BERRISFORD, KRIZYCK, POLE AND SOTIRIADIS, ON THE GROUND THAT THEY EXERCISE MANAGERIAL FUNCTIONS. THE BOARD HAS HAD OCCASION TO CONSIDER SIMILAR QUESTIONS IN SUCH CASES AS Pre-Con Murray Limited, O.L.R.B. MONTHLY REPORT, AUGUST 1965, p. 328, Uni-Form Builders Ltd., O.L.R.B. MONTHLY REPORT, MARCH 1967, p. 1019 AND Sovereign Construction Company Limited, O.L.R.B. MONTHLY REPORT, APRIL 1967, p. 24. IN THE LIGHT OF THESE DECISIONS AND HAVING REGARD TO THE EVIDENCE AND REPRESENTATIONS OF THE PARTIES PRESENTLY BEFORE US, THE BOARD FINDS THAT CHRYSANDOS SOTIRIADIS AND EMIL KRIZYCK DO NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND, ACCORDINGLY, SHOULD REMAIN ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT, BUT THAT STUART POLE DOES EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) AND IS THEREFORE NOT INCLUDED ON THE SAID LIST.

MAY, 1969

SUPPLEMENT



ONTARIO

Monthly Report



ONTARIO LABOUR RELATIONS BOARD

A STUDY OF
CONSENT TO PROSECUTE APPLICATIONS
DISPOSED OF BY
THE ONTARIO LABOUR RELATIONS BOARD
FROM APRIL 1, 1965 TO MARCH 31, 1968

by
A. M. MINSKY

Research Branch
Ontario Department of Labour

January, 1969

INTRODUCTION

The Labour Relations Act of Ontario prohibits certain courses of conduct that have come to be known as "unfair labour practices". On the part of employers, these consist of such violations of the Act as participating in or interfering with the right of a trade union to organize and represent employees or refusing to employ a person because he is or is seeking to become a trade union member. The unfair labour practices most frequently attributed to unions are those associated with unlawful strikes: that is, striking either when there is no collective agreement without first exhausting the conciliation machinery or striking during the currency of a collective agreement.

Employers or trade unions who engage in these unlawful activities are liable to prosecution in the courts. However, section 74(1) of the Act requires that the Labour Relations Board give its consent in writing before a prosecution can be undertaken. Upon conviction for any violation of the Act, section 69(1) prescribes the maximum penalties as \$100 per day for individuals and \$1,000 per day for corporations, trade unions, councils of trade unions, and employers' organizations.

Purpose and Scope

This study was undertaken to provide a basis for evaluating the experience under the present legislation in Ontario for disposing of unfair labour practices. For this purpose, the paper examines the 270 consent to prosecute applications disposed of by the Board during the three fiscal years between April 1, 1965 and March 31, 1968. The report itself is divided into two main parts. Part I is a statistical analysis of the applications for consent to prosecute dealt with by the Board in terms of the parties to the applications, the sections of the Act alleged to have been violated, the Board's dispositions, and prosecutions in Magistrate's Court. Part I also deals with 53 related applications for declaration of unlawful strike, 14 related applications for declaration of unlawful lock-out, and 34 related section 65 complaints. Part II is a study of the time lapse between the several stages of consent to prosecute proceedings.

Data Sources

The data for this study was drawn from three principal sources. First, for identification purposes, it used the Monthly Report, published by the Board, which gives the name and file number of each case disposed of by the Board each month. This includes withdrawn applications. The record of applications which is kept for the Board's own internal needs

in "progress books" was another source of information. In an unfair labour practices progress book, the Board enumerates the applications for consent and, in addition, those for declarations of unlawful strike or lock-out, and section 65 complaints.

For the bulk of the data needed, this study drew on the Board's files for each case. These files, used in conjunction with the progress books, were of great value in gathering the data used in the tables. With respect to consent applications the data identifies the sections of the Act alleged to have been violated and those cited by the Board in applications granted. The data on the three tables referring to unlawful strike or lock-out and section 65 complaints was drawn from the progress books and confirmed by the Board's files; this data relates the complaint applications to those asking for consent to prosecute.

Unit of Analysis

The workload of the Board is presented in terms of individual applications disposed of. This unit of analysis is used in preference to "industrial disputes" for two main reasons. In the first place, one industrial dispute may spawn a multiplicity of applications and the policy of the Board has been to give a separate decision on each. For example, in an illegal strike situation, it is the option of the employer to name all the employees striking as party respondents in one application or to name each employee in a separate application. In the latter case, the Board would hear common evidence at one hearing, but demand separate proof of the identity of each employee taking part in the unlawful strike, and then give a separate decision for each employee. Hence, it is quite valid to count applications separately even when they pertain to a common central dispute.

However, this method of compilation may give an illusion of a much greater number and variety of disputes before the Board than there really are. For example, in the 1967-68 fiscal year, the 95 applications disposed of represented 54 industrial disputes. In one case which the Board heard in the period studied, a company filed 33 separate applications naming individual employees who were alleged to have taken part in an unlawful strike. The Board granted 20 applications, dismissed seven and allowed six to be withdrawn. This example illustrates the drawback to presenting the data in terms of industrial incidents: each application may be disposed of differently and it would be almost impossible to quantify the various dispositions by "industrial incidents".

In addition, there is a practical reason for the presentation of the data by applications disposed of by the Board. Each application for consent to prosecute is separately processed which means that "application" data rather than "industrial dispute" data is a more accurate reflection of the administrative workload, and the only data available for analysis.

PART I

STATISTICAL ANALYSIS

This part of the paper is concerned with the characteristics and the form of disposition of the consent to prosecute applications handled by the Board in the three-year period. The relevant information is presented in eight tables which are reproduced at the end of the paper. Each is discussed separately in the following paragraphs.

Applications by Parties and by Disposition

The Labour Relations Act, section 74(2) states that:

an application for consent to institute a prosecution for an offence under this Act may be made inter alia by a trade union, a council of trade unions, a corporation or an employers' organization...

Notwithstanding this large group of eligible applicants, only three parties initiated an application for consent to prosecute employers, unions, and individuals (see Table 1). "Individuals" brought only four per cent of all applications in the period studied. None of these applications was granted. Employers, on the other hand, brought over 55 per cent of all applications--15 per cent more than the unions brought. Typically, employers named individuals as the respondents in two-thirds of their applications, while they named the union in only 15 per cent of them. In contrast, the unions named the employer as respondent in 85 per cent of all applications they made.

Upon examining the disposition of these applications by the Board, the most striking revelation is that on the average two out of every three filed were withdrawn prior to the scheduled first hearing. These comprised about 65 per cent of the applications made by employers and about 60 per cent of those made by unions. These withdrawals are made on a request by the applicant received by the Board before the first hearing date. However, it is Board policy to dismiss any application which is sought to be withdrawn either at or after the first hearing.

In considering the number of applications for consent that were granted, it is useful to note the "rate of success" with reference to both the number of applications filed with the Board and the number actually heard by the Board. Hence, if the applicants' rate of success in terms of the total number of applications disposed of by the Board is,

$$\frac{\text{number of applications granted}}{\text{number of applications filed}} \times 100$$

and the rate of success in terms of the applications actually heard by the board is,

$$\frac{\text{number of applications granted}}{\text{number of applications heard by the Board}} \times 100$$

then some meaningful success trends can be calculated from Table 1. For example, by means of the first method, eight per cent of all the employer applications disposed of by the Board naming the union as respondent and about 15 per cent of the union applications against the employer were granted. However, by means of the second method, 33 per cent of these applications made by the employer which were actually heard by the Board and 45 per cent of the like union applications were granted. In other words, if withdrawals are excluded a rather high rate of success is apparent.

Offences Under the Act

Tables 2 to 4 show a difference between the number of applications made to the Board and the number of sections of the Act alleged to have been violated in those applications. For example, employers made a total of 150 applications for consent to prosecute, but the total number of sections of the Act alleged to have been violated (Table 2) in these applications is 170. The reason for this is simple: the party applicant can and often does allege in one application a series of violations, which come under various sections of the Act.

Any violation of the Labour Relations Act, as was stated in section 74(2) supra, is grounds for an application for consent to prosecute. However, out of the many sections of the Act that could conceivably form the substance of an application, a handful of labour offences form the vast bulk of alleged violations.

In the case of employers, most of their applications allege infraction of sections dealing with an illegal strike. About 64 per cent of these allege violation of section 54(1) or (2), that is, striking when there is no collective agreement in operation, without first exhausting the conciliation process. Another one-third of employer applications concern allegations against unions or union officials counselling an unlawful strike (section 55) or union officers or individuals causing a strike (section 57).

On the other hand, unions charge violations of a wide spectrum of the Act's provisions. About 20 per cent of their applications allege infraction of section 48, which concerns interfering with the formation of a trade union or representation of employees by a trade union. Almost 45 per cent of union applications charge the employer with violating section 50 of the Act, that is, refusing to employ a person because he is a member of a trade union or is exercising his rights under the Act. Breaches of these two sections are likely to occur primarily in situations where the union is organizing workers in a plant and to a lesser extent in contract negotiations.

Other offences which the employer was alleged to have committed when negotiating a first or renewal agreement are found in sections 12, 52 and 59. These sections deal with, respectively, failure to bargain in good faith, the use of coercion or intimidation to compel a person to refrain from becoming a member of a trade union, and finally, the employer's changing working conditions in the plant after the union has given notice to bargain but before the conciliation provisions of the Act have been exhausted or a collective agreement has been reached. From Table 2 it is apparent that the union is far more likely to accuse the employer of failure to bargain in good faith than the employer to so accuse the union.

Under section 11 of the Hospital Labour Disputes Arbitration Act, 1965, which referentially incorporates section 74 of the Labour Relations Act, applications for consent to prosecute may be made to the Board. In the 1967-1968 fiscal year, two applications were made by unions alleging the infraction of the provision in the former Act prohibiting alteration of terms or conditions of employment after notice

to bargain has been given (that is, under section 10 of the Hospital Act which in the main embodies the offence in section 59(1) of the Labour Relations Act).

The Board cited a more restricted range of sections of the Act in granting consent to prosecute than was alleged in the applications. Table 3 shows the sections of the Act cited by the Board in applications granted, and that in two-thirds of those granted to employers the Board found evidence of an illegal strike (section 54(1) of the Act). As a matter of fact, the Board granted employer applications which alleged violations of sections of the Act not dealing with illegal strikes only four times in the three-year period. These other four infractions involved the sections of the Act dealing with failure to bargain in good faith (section 12), the intimidation or coercion of employees to compel them not to become a member of a union (section 52), and finally, the alteration of working conditions after notice has been given to bargain but before an agreement has been reached (section 59(1)).

However, the Board granted the union applications for consent to prosecute under a variety of the sections of the Act. The one most frequently cited by the Board in these cases was section 50, under which offences were found in over one-half of the union applications granted.

For applications granted, Table 4 specifies the sections of the Act alleged to have been violated and the section(s) of the Act cited by the Board in its decision. In the majority of cases, the sections of the Act alleged to have been violated were identical to those cited in the Board's findings: that is, when applications were granted the Board agreed with the complaints made. However, in six cases consent was granted for all but one offence that was alleged by the applicant.

Further Proceedings

Table 5 depicts the incidence of further proceedings taken by applicants to whom consent to prosecute was granted. Only four out of fifty-six granted applications were actually prosecuted in Magistrate's Court. However, certain necessary intermediate steps are often taken toward that end without it ever being reached. For example, after the Board's decision to grant leave to prosecute has been released, the applicant must obtain formal consent to prosecute documents signed and sealed by the Board in order to press the charge against the respondent in Court. These documents which are written by the applicant and then submitted to the Board for signing and sealing were taken out in almost 40 per cent of the granted applications. But this is where the proceedings in the bulk

of these cases stopped -- since only four applicants actually took their cases to Magistrate's Court.

In one particular case (which is not listed in the last two columns of Table 5), the person who pressed the charge in Court was not the party to whom the Board had granted consent to prosecute. Therefore, the respondent was able to go to a higher court and have the charge against him quashed, and the case was settled by the parties before the applicant, to whom the consent was granted, pressed the charge correctly.

The foregoing shows that the probability of a consent to prosecute application finally reaching Magistrate's Court is extremely low. Only eight per cent of all the applications granted in the three-year period by the Board were heard in Court. In terms of total applications disposed of by the Board, about two per cent were heard by a Magistrate. One reason why this figure is so small is that about two out of every three applications for consent made to the Board are withdrawn before the first hearing.

Accompanying Applications

An industrial dispute often spawns a consent to prosecute application filed in tandem with an application for declaration of unlawful strike (section 67) or lock-out (section 68). For example, when the union applies for consent to prosecute an employer for locking out the employees during the operation of a collective agreement, it may seek the immediate confirmation of the Board that the lock-out is unlawful. Similarly, when the employees are engaged in a strike during the currency of a collective agreement, the employer will frequently apply for a declaration of their illegal conduct.

On the other hand, consent applications may be accompanied by one based on section 65 of the Act seeking reinstatement of employees dismissed because of their union membership or activities on behalf of a union.

As Table 6 shows, 53 applications for declaration of unlawful strike were accompanied by 49 applications for consent to prosecute. The difference in these numbers is attributable to the fact that an applicant for consent to prosecute might name all the respondents in one application but might apply for a declaration of unlawful strike against each one separately. By the same token, the disposition of the consent to prosecute application is unrelated to the disposition of the strike declaration application. In other words, it is only a coincidence that 41 consent applications were withdrawn and 41 strike declaration applications were withdrawn. The consent applications thus withdrawn were not necessarily related to the strike declaration withdrawals. In fact, most were related, but in some cases the pattern might

be that the consent application was withdrawn after the strike declaration was granted or dismissed. It was noted frequently that the applicant withdrew his consent application if the strike application was dismissed. This is possibly because the strike declaration application is heard before the consent application even when both are filed simultaneously.

As was shown in Table 1, there were 150 applications made by employers for consent to prosecute. Table 6 shows that 49 of these applications (one-third) were accompanied by applications for declaration of unlawful strike. However, there is no comparable incidence of related lock-out applications to consent applications filed by the unions. Out of the 110 applications for consent to prosecute filed by the unions only 13 were filed with related declaration of lock-out applications (Table 7). However, one of these lock-out cases was not related to a consent application by a union but to a consent application filed by an employer, and this dispute was the source of a declaration of unlawful strike application by the employer.

Table 8 shows the consent to prosecute applications related to section 65 complaints. Approximately 20 per cent of all the union consent applications were accompanied by section 65 complaints. As pointed out above, the complaint under section 65 is designed to secure the reinstatement of an employee who was unlawfully dismissed for his union activities. A section 65 complaint must be made along with the consent application for this specific relief as the latter is penal in nature and would ultimately result only in the levying of a monetary fine on the respondent and not necessarily the reinstatement of the employee.

PART II

TIME LAPSE OF CONSENT TO PROSECUTE APPLICATIONS DISPOSED OF, APRIL 1, 1967 - MARCH 31, 1968

A time lapse study was undertaken for the consent to prosecute applications disposed of by the Board in the 1967-1968 fiscal year in order to determine the time taken at each stage of consent proceedings. Table 9 presents the time lapse for the 95 applications disposed of from the time the application

was made to its disposition by the Board. Time lapse tables were also prepared separately for those applications which were granted (Table 10), those which were dismissed (Table 11), and for the latter two dispositions taken together, that is applications heard by the Board (Table 12).

The median number of days required to dispose of the 95 consent to prosecute applications was 23 (Table 9). This very short time lapse between the dates the applications were filed and of their disposition is partly accounted for by the fact that 76 of them were withdrawn. Since applications are often withdrawn before the scheduled first hearing, the time they are in the Board's hands is often just a few days. In addition, in some cases proceedings were temporarily postponed, which, in fact, resulted in their withdrawal since they were never rescheduled for hearing.

It is noted that the majority of applications, about 75 per cent, were disposed of within 30 days of being filed. Only 25 per cent of them took longer than one month to process and 11 per cent took more than two months.

Table 10 is a breakdown of the actual time lapse in days of the eight consent applications that were granted by the Board during the 1967-1968 fiscal year. It shows the time taken at each of the two main stages, from the date the application was filed to the close of hearing and from the close of hearing to the Board's disposition of the case. The time required from filing to close of hearing includes time loss caused by adjournments of the initial hearing scheduled for a case, the number of days of hearing and intervals between hearings. The "total" column is a summation of the two main time periods, and therefore records the number of days from application to final disposition.

The average time required to proceed from filing to close of hearing of these cases was 31 days. This time would have been shorter by 10 days had no adjournments occurred in the initial hearing in three cases. These adjournments caused a total time loss of 77 days. The shortest time taken for a case was 13 days; the longest time was 55 days.

The average number of days taken from close of hearing to disposition of these granted applications was 13. In five cases a decision was issued by the Board between one and eight days after hearing. In the remaining three cases between 26 and 36 days were required to proceed from hearing to disposition.

The average time taken for all the granted applications from the time they were filed to their disposition was 44 days. Adjournments in the three cases noted above caused this average to be 10 days higher than it otherwise would have been.

The time lapse data for the eleven applications that were dismissed by the Board is given in Table 11. The times taken at the major stages of processing of these applications are quite similar to those for the applications granted. Because of adjournments of the initial hearing in four cases, the average times required from filing to close of hearing and from filing to disposition increased by 7 days.

Table 12 shows the median number of days taken for the granted and dismissed applications combined. In other words, it presents the time lapse of cases heard by the Board. Of these 19 cases, only seven, or about one-third, were disposed of in the 30 day period after the application was made while about one-third were disposed of in the second month and a final third in the next month. The median number of days taken to dispose of applications heard was 47.

Table 1

CONSENT TO PROSECUTE APPLICATIONS DISPOSED OF
BY THE BOARD, APRIL 1, 1965 - MARCH 31, 1968

Applicant and Respondent	Granted	Dismissed	Withdrawn	Total
<u>Total Applications</u>	56	43	171	270
<u>Employer Applications</u>	36	14	100	150
Respondent:				
Union	2	4	18	24
Union Official	4	1	12	17
Union & Union Official	1	1	3	5
Individual	29	8	67	104
<u>Union Applications</u>	20	22	68	110
Respondent:				
Employer	16	20	59	95
Employer Official	2	2	7	11
Employer & Empl. Official	2	-	1	3
Union	-	-	1	1
<u>Individual Applications</u>	-	7	3	10
Respondent:				
Union	-	5	-	5
Employer	-	2	3	5

Sections Cited in Applications

Applicant and Respondent	Sections Cited in Applications																				
	50 (1)				54 (2)				TOTAL												
	34 (7)	39 (3)	48 (4)	49 (5)	(a)	(b)	(c)	51	52	53 (1)	(2)	55	56	57	59						
11 Applications	1	22	1	2	1	40	3	37	32	41	9	18	2	110	11	40	2	16	22	410	
Employer Applications	-	4	-	-	-	-	-	-	1	-	3	-	106	2	40	-	13	1	170		
Respondent:																					
Union Official	-	4	-	-	-	-	-	-	-	-	1	-	3	-	16	-	1	1	26		
Union & Union Official	-	-	-	-	-	-	-	-	-	-	2	-	-	-	18	-	4	-	24		
Individual	-	-	-	-	-	-	-	-	-	-	1	-	1	2	6	-	3	-	12		
Union Applications	(3)	1	18	1	2	1	40	-	33	28	36	9	13	2	3	9	-	2	3	21	222
Respondent:																					
Employer Official	1	18	1	2	1	30	-	23	20	28	7	11	2	3	9	-	2	3	20	181	
Empl. & Empl. Official	-	-	-	-	-	8	-	7	7	7	1	1	-	-	-	-	1	1	31		
Union	-	-	-	-	-	2	-	3	1	1	1	1	-	-	-	-	-	-	9		
Individual Applications	-	-	-	-	-	-	-	3	4	4	4	-	2	-	1	-	-	-	1		
Respondent:																					
Union	-	-	-	-	-	-	-	3	4	4	4	-	2	-	1	-	-	-	5		
Employer	-	-	-	-	-	-	-	4	4	4	4	-	2	-	1	-	-	-	13		

(1) Section 50 is shown broken down into its three component subsections in this table. However, when the applicant alleged a section 50 violation, he alleged in 31 applications the violation of section 50(a), (b) and (c) together.

(2) Section 54(1) and 54(2) are two distinct subsections. The former deals with strikes during the operation of a collective agreement and the latter when there is no agreement.

(3) Two applications made by unions against hospitals have not been included in this table as they were dealt with under the Hospital Labour Disputes Arbitration Act, 1965, s. 10 (one application was withdrawn and one dismissed).

- 13 -

SECTIONS OF THE ACT CITED BY THE BOARD IN GRANTING CONSENT TO
PROSECUTE APPLICATIONS, APRIL 1, 1965 - MARCH 31, 1968

Applicant and Respondent	Sections Cited by the Board						TOTAL
	50(1)	(a)	(b)	(c)	54	59	
11	12	48		(1)	55	(1)	
<u>Applications Granted</u>							
<u>Employer Applications</u>	-	1	-	-	-	2	28
<u>Respondent:</u>					-	-	
Union	-	1	-	-	-	1	3
Union Official	-	-	-	-	2	4	9
Union & Union Official	-	-	-	-	-	1	2
Individual	-	-	-	-	28	-	29
<u>Union Applications</u>	1	2	6	9	4	8	42
<u>Respondent:</u>							
Employer	1	2	3	6	3	5	
Employer Official	-	-	2	1	1	1	7
Employer & Empl. Official	-	-	1	2	-	2	6
							5

(1) Section 50 is shown broken down into its components, but it might be noted that section 50 (a), (b) and (c) was cited in combination four times.

Table 4

CORRELATION BETWEEN SECTIONS OF THE ACT ALLEGED TO HAVE BEEN VIOLATED AND SECTIONS OF THE ACT CITED BY THE BOARD IN GRANTING CONSENT TO PROSECUTE, APRIL 1, 1965 - MARCH 31, 1968

Applicant and Respondent	Applications granted	Sections of the Act alleged to have been violated	Sections of the Act cited by the Board in granting the application
Total Applications	56		
<u>Employer Applications</u>			
Respondent:			
Union	1	12, 59(1)	12, 59(1)
Union Official	2	55	55
	1	52, 55, 57	52, 55, 57
	1	57	57
	1	55, 57	55, 57
Union & Union Official	1	54(2), 55, 57	55, 57
Individual	8	54(1)	54(1)
	20	54(1), (2)	54
<u>Employer & Union Applications</u>			
Respondent:			
Employer	1	11	11, 59(1)
	1	12	12
	1	48	48
	1	48, 50(a), (b), (c), 52	50(a), (b), (c), 52
	2	48, 50(a), (b), (c), 59(1)	48, 50(a), (b), (c), 59(1)
	1	50(a)	50(a)
	1	50(c)	50(c)
	1	50(a), 52	50(a), 52
	1	50(c), 52, 53	50(c), 52
	3	59(1)	59(1)
	1	50(a), 52, 59	50(a), 52
Empl. Official	1	12	12
	1	48, 50(a), (b), (c), 52	48, 50(a), (b), (c), 52
	1	52, 55, 57	52, 55, 57
Employer & Empl. Official	1	48, 50(a), (b), (c), 51	48, 50(c)
	1	50(a)	50(a)
	1	59(1)	59(1)
	1	48, 50(a), (c)	48, 50(a), (c)

Table 5

CONSENT TO PROSECUTE APPLICATIONS GRANTED BY THE BOARD
IN WHICH FURTHER STEPS OR PROCEEDINGS WERE TAKEN,
APRIL 1, 1965 - MARCH 31, 1968

Applicant and Respondent	Applications Granted	Further Steps or Proceedings Taken		
		Formal Documents Taken Out (1)	Information Laid	Magistrates' Court
Total Applications	56	21	4	4
<u>Employer Applications</u>	36	8	1	1
Respondent:				
Union	2	2	1	1
Union Official	4	4	-	-
Union & Union Official	1	-	-	-
Individual	29	2	-	-
<u>Union Applications</u>	20	13	3	3
Respondent:				
Employer	16	9	2	2
Empl. Official	1	1	1	1
Empl. & Empl. Official	3	3	-	-

- (1) The data in this column may not be as complete as possible. The information was in the main gathered from Board files with the resultant risk that it may not represent all the formal documents signed and sealed by the Board but just those for which copies were made.

Table 6

APPLICATIONS FOR CONSENT TO PROSECUTE AND RELATED APPLICATIONS FOR
 DECLARATION OF UNLAWFUL STRIKE, APRIL 1, 1965 - MARCH 31, 1968

Parties	Disposition of Consent to Prosecute Application			Disposition of Strike Declaration Application			Total	
	Granted	Dis-missed	Withdrawn	Total	Granted	Dis-missed	Withdrawn	
Employer v. Union	-	-	6	6	-	2	4	6
Employer v. Employee	4	1	24	29	4	1	26	31
Employer v. Union & Union Official	2	1	9	12	4	1	8	13
Employer v. Union Official	-	-	2	2	-	-	3	3
Total	6	2	41	49	8	4	41	53

Table 7

APPLICATIONS FOR CONSENT TO PROSECUTE AND RELATED APPLICATIONS FOR
DECLARATION OF UNLAWFUL LOCK-OUT, APRIL 1, 1965 - MARCH 31, 1968

Parties	Disposition of Consent to Prosecute Applications			Disposition of Lock-out Declaration Applications		
	Granted	Dis-missed	With-drawn	Total	Granted	Dis-missed
Union v. Employer	-	-	12	12	1 (1)	1
Individual v. Employer	-	1	-	1	-	1
Total	-	1	12	13	1	2
					11	14
					11	13

(1) This lock-out application is connected to a consent to prosecute and a strike declaration application which were filed by a company against a union which in turn filed this lock-out application. The union did not file a consent to prosecute application.

Table 8

APPLICATIONS FOR CONSENT TO PROSECUTE AND RELATED APPLICATIONS
FOR SECTION 65 RELIEF, APRIL 1, 1965 - MARCH 31, 1968

Parties	Disposition of Consent to Prosecute Applications			Disposition of Section 65 Applications				
	Granted	Dis- missed	With- drawn	Total	Granted	Dis- missed	With- drawn	Total
Union v. Employer Official	1	1	-	2	4	4 (1)	11	19
Union v. Employer	5	3	9	17	4	-	5	9
Union v. Employer & Employer Official	2	-	2	4	-	3	3	6
Total	8	4	11	23	8	7	19	34

(1) One of these dismissals was disposed of by the Board in the 1968-1969 fiscal year.

Table 9

TIME LAPSE FOR CONSENT TO PROSECUTE APPLICATIONS,
APRIL 1, 1967 - MARCH 31, 1968

APPLICATION TO DISPOSITION (IN DAYS)

Time Lapse (Days)	Number and Per Cent of Applications			
	Frequency	Cumulative Frequency	Per Cent of All Applications	Cumulative Per Cent
1 - 10	10	10	10.6	10.6
11 - 20	30	40	31.6	42.2
21 - 30	30	70	31.6	73.8
31 - 40	4	74	4.4	78.2
41 - 50	5	79	5.3	83.5
51 - 60	5	84	5.3	88.8
61 - 70	5	89	5.2	94.0
71 - 80	1	90	1.0	95.0
81 - 90	2	92	2.0	97.0
90 or more	3	95	3.0	100.0
Total	95(1)			

(1) Median number of days: 23

Table 10

TIME LAPSE IN DAYS FOR EACH CONSENT TO PROSECUTE
APPLICATION GRANTED, APRIL 1, 1967 - MARCH 31, 1968

Application Number	Number of Days from -			Period of Adjournment of First Hearing	Number of Hearings Held
	Date Filed to Close of Hearing (a)	Close of Hearing of Disposition	Total		
1	43	8	51	20	1
2	16	1	17	-	1
3	13	6	19	-	1
4	44	1	45	22	1
5	26	36	62	-	2 (b)
6	55	26	81	35	2 (c)
7	34	26	60	-	2 (d)
8	17	1	18	-	1
Average (Days)	31.0	13.1	44.1		

- (a) Includes periods of adjournment of first hearing, number of days of hearing and intervals between hearings.
- (b) There was an interval of 8 days between the hearings.
- (c) The hearings were held on successive days.
- (d) There was an interval of 10 days between the hearings.

Table 11

TIME LAPSE IN DAYS FOR EACH CONSENT TO PROSECUTE
APPLICATION DISMISSED, APRIL 1, 1967 - MARCH 31, 1968

Appli- cation Number	Number of Days from -			Period of Adjournment of First Hearing	Number of Hearings Held
	Date Filed to Close of Hearing (a)	Close of Hearing to Disposition	Total		
1	35	28	63	21	1
2	56	13	69	8	2 (b)
3	56	13	69	8	2 (b)
4	19	26	45	-	2 (c)
5	19	26	45	-	2 (c)
6	21	4	25	-	1
7	14	1	15	-	1
8	19	26	45	-	2 (c)
9	17	5	22	-	1
10	20	1	21	-	1
11	51	27	78	35	1
Average (Days)	29.7	15.4	45.2		

(a) Includes periods of adjournment of first hearing, number of days of hearing and intervals between hearings.

(b) There was an interval of 22 days between the hearings held in each case.

(c) The hearings were held on successive days.

Table 12

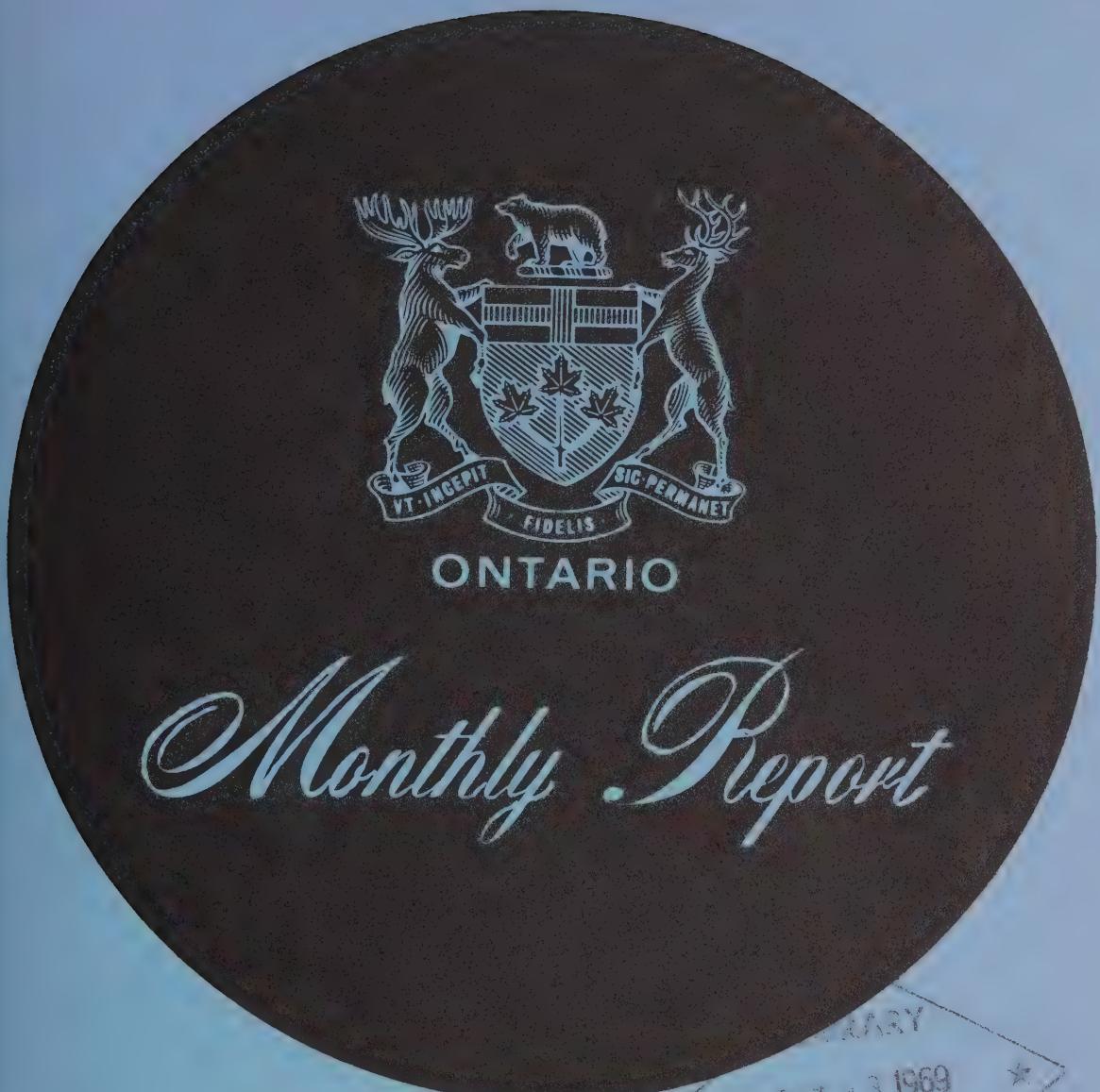
TIME LAPSE FOR CONSENT TO PROSECUTE APPLICATIONS
GRANTED OR DISMISSED, APRIL 1, 1967 - MARCH 31, 1968

APPLICATION TO DISPOSITION (IN DAYS)

Time Lapse (Days)	Number and Per Cent of Applications			
	Frequency	Cumulative Frequency	Per Cent of All Applications Granted or Dismissed	Cumulative Per Cent
1 - 10	-	-	-	-
11 - 20	4	4	21.1	21.1
21 - 30	3	7	15.8	36.9
31 - 40	-	7	-	36.9
41 - 50	4	11	21.1	58.0
51 - 60	2	13	10.5	68.5
61 - 70	4	17	21.1	89.6
71 - 80	1	18	5.3	94.9
81 - 90	1	19	5.3	100.0
Total	19 ⁽¹⁾			

(1) Median number of Days: 47

JUNE, 1969



ONTARIO LABOUR RELATIONS BOARD

CASE LISTINGS JUNE 1969

	PAGE
1. CERTIFICATION	
(A) BARGAINING AGENTS CERTIFIED	306
(B) APPLICATIONS DISMISSED	323
(C) APPLICATIONS WITHDRAWN	326
2. APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS	327
3. APPLICATION FOR DECLARATION OF SUCCESSOR STATUS	329
4. APPLICATION FOR DECLARATION THAT STRIKE UNLAWFUL	329
5. APPLICATIONS FOR CONSENT TO PROSECUTE	329
6. COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE)	330
7. APPLICATION FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT	331
8. APPLICATIONS UNDER SECTION 47A	331
9. APPLICATION UNDER SECTION 63 (FINANCIAL STATEMENT REQUESTED BY TRADE UNION MEMBER)	332
10. APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2)	332
11. JURISDICTION DISPUTE	333
12. APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION	333
13. INDEXED ENDORSEMENTS	

CERTIFICATION

12984-67-R:	THE GOVERNORS OF THE UNIVERSITY OF TORONTO	334
15412-68-R:	THE OTTAWA CITIZEN, A DIVISION OF SOUTHAM PRESS LIMITED	335
15567-68-R:	INTERNATIONAL HARVESTER COMPANY OF CANADA LIMITED	337
15592-68-R:	THE BOARD OF HEALTH OF THE YORK- OSHAWA DISTRICT HEALTH UNIT	340
15637-68-R:	CARA OPERATIONS LIMITED	349
15676-68-R:	THE CORPORATION OF THE BOROUGH OF ETOBICOKE	351
15705-68-R:	ELK LAKE PLANING MILL LTD.	352
15710-68-R:	FABRICON MANUFACTURING LIMITED	353
15851-68-R:	SAMTEIT STORE FIXTURES & REFRIGERATION LIMITED	358
15967-69-R:	INTERCITY FOOD SERVICES INC.	360
16041-69-R:	THE PETERBOROUGH COUNTY BOARD OF EDUCATION	362
16052-69-R:	THE BORDEN COMPANY, LIMITED	363
16112-69-R:	OLIVETTI UNDERWOOD LIMITED	365

	PAGE
CERTIFICATION (CONTINUED)	
16136-69-R: HOTEL DIEU HOSPITAL, St. CATHARINES	367
16138-69-R: THE COCHRANE-IROQUOIS FALLS BOARD OF EDUCATION	368
16143-69-R: GRAND RIVER CABLE T.V. LIMITED	369
16152-69-R: PURE SPRING (CANADA) LIMITED	371
16153-69-R: ALMA PAINT AND VARNISH Co. LIMITED	373
16164-69-R: THE NATIONAL CASH REGISTER COMPANY OF CANADA LIMITED	375
16166-69-R: THE CORPORATION OF THE CITY OF CORNWALL	379
16167-69-R: GRAND RIVER CABLE T.V. LIMITED	380
16171-69-R: ESSEX CABINET MAKERS (ONTARIO) LIMITED	382
16177-69-R: BROADVIEW POULTRY FARMS LTD.	385
16192-69-R: MILNES FUEL OIL LTD.	386
16201-69-R: THE SIOUX LOOKOUT GENERAL HOSPITAL	388
16202-69-R: THE ESSEX COUNTY HUMANE SOCIETY	391
16242-69-R: LOBLAW GROCETERIAS Co., LIMITED	392
16243-69-R: E. A. LISK & SONS LIMITED	394
16255-69-R: PHOTO ENGRAVERS & ELECTROTYPEERS LIMITED	395
TERMINATION	
16157-69-R: STRATHMORE DIVISION OF SOMERVILLE INDUSTRIES LIMITED	397
STRIKE UNLAWFUL	
16214-69-U: PIGOTT CONSTRUCTION COMPANY LIMITED	399
PROSECUTION	
15963-69-U: FRASER-BRACE ENGINEERING COMPANY LIMITED	404
15972-69-U: TORONTO CONSTRUCTION ASSOCIATION AND MEMBERS AS APPEARING ON THE ATTACHED LIST	406
16111-69-U: KAZYZ KARPAS AND LILLIE KARPAS, CARRYING ON BUSINESS UNDER THE NAME AND STYLE OF CENTRAL HOTEL	409
SECTION 65	
15845-68-U: SAMTEIT STORE FIXTURES & REFRIGERATION LIMITED	410
15857-68-U: SAMTEIT STORE FIXTURES & REFRIGERATION LIMITED	411
15864-68-U: SAMTEIT STORE FIXTURES & REFRIGERATION LIMITED	411
15885-68-U: SAMTEIT STORE FIXTURES & REFRIGERATION LIMITED	411
16079-69-U: THE SAVARIN LIMITED	412
16150-69-U: MR. WILLINEGGAR	416
SECTION 47(A)	
15613-68-M: PEEL COUNTY BOARD OF EDUCATION	418
15660-68-M: THE MIDDLESEX COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD	420

SECTION 47(A) (CONTINUED)

15933-68-M:	THE MIDDLESEX COUNTY BOARD OF EDUCATION, EAST MIDDLESEX DISTRICT HIGH SCHOOL BOARD	422
15934-68-M:	THE MIDDLESEX COUNTY BOARD OF EDUCATION EAST MIDDLESEX DISTRICT HIGH SCHOOL BOARD	424
15935-68-M:	THE MIDDLESEX COUNTY BOARD OF EDUCATION; GLENCOE DISTRICT HIGH SCHOOL BOARD; EAST MIDDLESEX DISTRICT HIGH SCHOOL BOARD; STRATHROY DISTRICT COLLEGIATE INSTITUTE	425
16145-69-M.	THE WELLAND COUNTY BOARD OF EDUCATION	427
 JURISDICTIONAL DISPUTES		
16086(A)-69-JD:	OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL 124 AND BEMAC PROTECTIVE COATING LIMITED	429
16237(A)-69-JD:	THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO AND THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCALS 27, 3233, 681, 3227, 666 AND 1963 AND THE CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY	433
 RECONSIDERATION OF BOARDS' DECISION - CERTIFICATION		
14781-68-R:	THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO	434
 RECONSIDERATION OF BOARDS' DECISION - TERMINATION		
14937-68-R:	GORMAN ECKERT AND COMPANY LIMITED	438
 RECONSIDERATION OF BOARDS' DECISION - PROSECUTION		
15382-68-U:	NORTH AMERICAN PLASTICS CO. LIMITED, MICHAEL LADNEY, WILLIAM LATHAM, PETER EMANUEL AND FRANK CORCORAN	439
14. EXCERPT FROM DECISION IN CONSTRUCTION INDUSTRY CASE		440

ERRATUM

THE PAGES OF THE MAY 1969 REPORT WERE
 INCORRECTLY NUMBERED, THEY SHOULD HAVE
 BEEN NUMBERED 147 TO 305.

STATISTICAL TABLES FOR FIRST 3 MONTHS (APRIL - JUNE) FISCAL YEAR 1969-70

TABLE	PAGE
I. APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD	442
II. HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD	442
III. APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY MAJOR TYPES	443
IV. APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY TYPE AND DISPOSITION	444
V. REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD	446
VI. REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD	446

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING JUNE 1969

BARGAINING AGENTS CERTIFIED DURING JUNE 1969

NO VOTE CONDUCTED

12984-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE GOVERNORS OF THE UNIVERSITY OF TORONTO (RESPONDENT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (INTERVENER #1) v. BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 204 (INTERVENER #2) v. LOCAL UNION 46, THE UNITED ASSOCIATION OF JOURNEYMAN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (INTERVENER #3) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL NON-PROFESSIONAL EMPLOYEES OF THE UNIVERSITY OF TORONTO LIBRARY, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (285 EMPLOYEES IN THE UNIT).

FOR PURPOSES OF CLARITY, THE BOARD NOTES THE AGREEMENT OF THE APPLICANT AND THE RESPONDENT THAT SECRETARIES EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS IN THE LIBRARY OFFICE, THE BOOK SELECTION AREA, THE HUMANITIES AND SOCIAL SCIENCES AREA, THE SCIENCE AND MEDICINE AREA AND THE TECHNICAL SERVICES AREA ARE NOT INCLUDED IN THE BARGAINING UNIT.

FOR PURPOSES OF CLARITY, THE BOARD NOTES THAT THE EMPLOYEES OF THE UNIVERSITY LIBRARY INCLUDE THOSE LOCATED AT THE MAIN BUILDING AND AT 175 BEDFORD ROAD ON THE ST. GEORGE STREET CAMPUS. ALSO INCLUDED IN THE BARGAINING UNIT ARE THOSE EMPLOYEES LOCATED AT THE NEW COLLEGE LIBRARY, THE LAIDLAW LIBRARY AT UNIVERSITY COLLEGE, THE LIBRARY AT SIDNEY SMITH HALL AND THE ENGINEERING LIBRARY IN THE CAL-BRAITH BUILDING, WHICH ARE ALL ON THE ST. GEORGE STREET CAMPUS. ALL OF THE EMPLOYEES EMPLOYED IN THE ABOVE LOCATIONS FORM A PART OF THE UNIVERSITY LIBRARY UNDER THE CONTROL AND DIRECTION OF THE CHIEF LIBRARIAN.

FOR PURPOSES OF CLARITY, THE BOARD NOTES THAT EMPLOYEES IN THE FACULTY AND DEPARTMENTAL LIBRARIES, EMPLOYEES WORKING ON THE ONTARIO NEW UNIVERSITY LIBRARIES PROJECT AND EMPLOYEES WORKING AT ERINDALE COLLEGE AND SCARBOROUGH COLLEGE ARE NOT INCLUDED IN THE BARGAINING UNIT.

(SEE INDEXED ENDORSEMENT PAGE 334).

15567-68-R: INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS (APPLICANT) V. INTERNATIONAL HARVESTER COMPANY OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT ITS BATHURST STREET BRANCH IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (41 EMPLOYEES IN THE UNIT).

(CERTIFIED)..

UNIT #3: "ALL EMPLOYEES OF THE RESPONDENT AT ITS ST. CLAIR AVENUE BRANCH IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (41 EMPLOYEES IN THE UNIT).

(CERTIFIED).

UNIT #4: "ALL EMPLOYEES OF THE RESPONDENT AT ITS SCARBOROUGH BRANCH IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (13 EMPLOYEES IN THE UNIT).

(CERTIFIED).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT IN MISSISSAUGA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (26 EMPLOYEES IN THE UNIT).

(DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 337).

15592-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE BOARD OF HEALTH OF THE YORK-OSHAWA DISTRICT HEALTH UNIT (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT SAVE AND EXCEPT REGISTERED AND GRADUATE NURSES, CHIEF PUBLIC HEALTH INSPECTOR, AND THOSE ABOVE THE RANK OF CHIEF PUBLIC HEALTH INSPECTOR." (42 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 340).

15637-68-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. CARA OPERATIONS LIMITED (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT ITS VOYAGEUR RESTAURANT IN THE TOWNSHIP OF WEST OXFORD, SAVE AND EXCEPT SUPERVISORS, SUPERVISOR-HOSTESSES, PERSONS ABOVE THE RANK OF SUPERVISOR OR SUPERVISOR-HOSTESS, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (27 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES AS CONTAINED IN THE EXAMINER'S REPORT).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT ITS VOYAGEUR RESTAURANT IN THE TOWNSHIP OF WEST OXFORD REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT SUPERVISORS, SUPERVISOR-HOSTESSES, PERSONS ABOVE THE RANK OF SUPERVISOR OR SUPERVISOR-HOSTESS, AND OFFICE STAFF." (46 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 349).

15676-68-R: NURSES' ASSOCIATION DEPARTMENT OF HEALTH BOROUGH OF ETOBICOKE (APPLICANT) v. THE CORPORATION OF THE BOROUGH OF ETOBICOKE (RESPONDENT).

UNIT: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT SAVE AND EXCEPT SUPERVISORY NURSES AND PERSONS ABOVE THE RANK OF SUPERVISORY NURSE AND NURSES REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (44 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 351).

15710-68-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) v. FABRICONMANUFACTURING LIMITED (RESPONDENT) v. INDEPENDENT WIRE AND CABLE WORKERS UNION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TRENTON SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, SALES STAFF STUDENTS EMPLOYED IN THE SCHOOL VACATION PERIOD AND STUDENTS ON A CO-OPERATIVE TRAINING PROGRAMME WITH A UNIVERSITY." (138 EMPLOYEES IN THE UNIT).

FOR THE PURPOSE OF CLARITY THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT METHODS AND PRODUCTION CONTROL EMPLOYEES ARE INCLUDED IN THE OFFICE STAFF AND ARE NOT THEREFORE EMPLOYEES INCLUDED IN THE BARGAINING UNIT. ALSO FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT THE STATIONARY ENGINEER IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

(SEE INDEXED ENDORSEMENT PAGE 353).

15851-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. SAMTEIT STORE FIXTURES & REFRIGERATION LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (45 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 358).

15868-68-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. INTERCITY FOOD SERVICES INC. (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RESTAURANT IN STEINBERG'S DEPARTMENT STORE AT HAMILTON, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (6 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL EMPLOYEES REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD BY THE RESPONDENT AT ITS RESTAURANT IN STEINBERG'S DEPARTMENT STORE AT HAMILTON, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, OFFICE STAFF, AND PERSONS INCLUDED IN BARGAINING UNIT #1." (6 EMPLOYEES IN THE UNIT).

15891-68-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF SALTFLEET (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT MUNICIPAL CLERK, ENGINEER, ASSESSMENT COMMISSIONER, RECREATION & PARKS DIRECTOR, PLANNING & ZONING SUPERVISOR, INDUSTRIAL COMMISSIONER, DEPUTY CLERK-TREASURER, WATER SUPERINTENDENT, TREASURER, PROFESSIONAL ENGINEERS AND PERSONS ABOVE THOSE RANKS." (24 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

15954-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. N. MORISSETTE DIAMOND DRILLING LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT THE SHEBANDOWAN MINE PROJECT OF THE INTERNATIONAL NICKEL COMPANY OF CANADA LIMITED, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (24 EMPLOYEES IN THE UNIT).

15967-69-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. INTERCITY FOOD SERVICES INC. (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT ST. CATHARINES SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (8 EMPLOYEES IN THE UNIT).

(APPLICANT CERTIFIED).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT ST. CATHARINES EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK SAVE AND EXCEPT ASSISTANT MANAGER AND PERSONS ABOVE THE RANK OF ASSISTANT MANAGER." (4 EMPLOYEES IN THE UNIT).

(APPLICATION DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 360).

16052-69-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. THE BORDEN COMPANY, LIMITED (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT ASSISTANT MANAGERS, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, AND PERSONS COVERED UNDER A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT DATED JANUARY 1ST 1968." (6 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE SECRETARY-INVOICE CLERK IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND IS EXCLUDED FROM THE BARGAINING UNIT DESCRIBED ABOVE.

FOR THE PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE ASSISTANT OFFICE MANAGER AND THE NIGHT SUPERVISOR ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT DESCRIBED ABOVE.

(SEE INDEXED ENDORSEMENT PAGE 363).

16122-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. PROVISIONAL COUNTY OF HALIBURTON (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS HOME FOR THE AGED SAVE AND EXCEPT PROFESSIONAL AND MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, MAINTENANCE SUPERVISOR, KITCHEN SUPERVISOR, HOUSEKEEPING SUPERVISOR, PERSONS ABOVE THE RANK OF SUPERVISOR, TECHNICAL PERSONNEL AND OFFICE STAFF." (35 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16136-69-R: NURSES' ASSOCIATION HOTEL DIEU HOSPITAL, ST. CATHARINES (APPLICANT) v. HOTEL DIEU HOSPITAL, ST. CATHARINES (RESPONDENT).

UNIT: "ALL LAY REGISTERED AND GRADUATE NURSES EMPLOYED AS SUCH BY THE RESPONDENT, SAVE AND EXCEPT HEAD NURSES AND PERSONS ABOVE THE RANK OF HEAD NURSE." (118 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 367).

16153-69-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) v. ALMA PAINT AND VARNISH CO. LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, RETAIL STORE EMPLOYEES, CHEMISTS, LABORATORY EMPLOYEES AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (108 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 373).

16161-69-R: THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.) (APPLICANT) v. THE SAULT STE. MARIE BOARD OF EDUCATION (RESPONDENT).

UNIT: "ALL TEACHERS OF THE RESPONDENT AT ITS ONTARIO MANPOWER TRAINING CENTRES, SAVE AND EXCEPT CO-ORDINATOR, ASSISTANT CO-ORDINATOR, ACADEMIC HEAD, ONE SECRETARY TO THE CO-ORDINATOR, ONE SECRETARY TO THE ASSISTANT CO-ORDINATOR, NURSE, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS AND TEACHERS AS DEFINED IN THE TEACHING PROFESSION ACT." (26 EMPLOYEES IN THE UNIT).

16165-69-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE WELLINGTON COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (16 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND OFFICE STAFF." (9 EMPLOYEES IN THE UNIT).

16168-69-R: SHOPMEN'S LOCAL UNION No. 734 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (A.F. L., C.I.O., C.L.C.) (APPLICANT) V. ROBERTSON V P CANADA (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, WATCHMEN AND PERSONS ENGAGED IN FIELD ERECTION, INSTALLATION AND CONSTRUCTION WORK." (4 EMPLOYEES IN THE UNIT).

16171-69-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. ESSEX CABINET MAKERS (ONTARIO) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF ITS SHOP AT OTTAWA, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (27 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 382).

16172-69-R: OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 327 (APPLICANT) V. VERSAFOOD SERVICES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES EMPLOYED BY THE RESPONDENT AT THE SIOUX LOOKOUT GENERAL HOSPITAL AT SIOUX LOOKOUT, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (26 EMPLOYEES IN THE UNIT).

16173-69-R: GENERAL TRUCK DRIVERS¹ UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. DALTON CARTAGE CO. LIMITED (RESPONDENT) V. WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (INTERVENER).

UNIT: " ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (10 EMPLOYEES IN THE UNIT).

16177-69-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA A.F.L. C.I.O. C.L.C. (APPLICANT) v. BROADVIEW POULTRY FARMS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PETERBOROUGH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (57 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 385).

16178-69-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) v. HOLMES DAIRY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NAPANEE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (4 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16180-69-R: INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS, LODGE #210 (APPLICANT) v. PAULAR ALUMINUM YACHTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SUMMERSTOWN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (25 EMPLOYEES IN THE UNIT).

16185-69-R: OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 327 (APPLICANT) v. THE DRYDEN BOARD OF EDUCATION (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BINDING UPON THE RESPONDENT." (17 EMPLOYEES IN THE UNIT).

16201-69-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 327 (APPLICANT) v. THE SIOUX LOOKOUT GENERAL HOSPITAL (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS HOSPITAL AT SIOUX LOOKOUT, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, REGISTERED NURSES, GRADUATE NURSES, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, DEPARTMENT HEADS, OFFICE MANAGER, SUPERVISORS, PERSONS ABOVE THE RANKS OF DEPARTMENT HEAD, OFFICE MANAGER AND SUPERVISOR, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (33 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 388).

16202-69-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION 880 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. THE ESSEX COUNTY HUMANE SOCIETY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT OFFICE MANAGER AND PERSONS ABOVE THE RANK OF OFFICE MANAGER." (5 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 391).

16215-69-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE STORMONT, DUNDAS AND GLENGARRY COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (59 EMPLOYEES IN THE UNIT).

16220-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. HARAMAC CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (21 EMPLOYEES IN THE UNIT).

16222-69-R: UNITED GLASS & CERAMIC WORKERS OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) v. SCHULZ CONCRETE PIPE LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, QUALITY CONTROL ENGINEER, HEAD SHIPPER, OFFICE, CLERICAL AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS A WEEK." (19 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16224-69-R: HOTEL, CLUBS, RESTAURANTS & TAVERN EMPLOYEES UNION LOCAL 261, A.F.L. - C.I.O. - C.L.C. (APPLICANT) v. VERSAFOOD SERVICES LIMITED HERITAGE RESTAURANTS DIVISION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE ST. LAURENT SHOPPING CENTRE, ST. LAURENT BOULEVARD, OTTAWA, SAVE AND EXCEPT MANAGER, ASSISTANT MANAGER, CHEF, ASSISTANT CHEF, MAITRE D', HEAD BARTENDER, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (50 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16225-69-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) v. WEYERHAEUSER CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF WEYERHAEUSER CANADA LIMITED WORKING AT THE GARAGE, JOHN STREET, MATTAWA, ONTARIO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING SCHOOL VACATION PERIOD." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16228-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) v. FRANKI CANADA LIMITED (RESPONDENT).

UNIT: "ALL PILE-SETTERS IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND PERSONS COVERED BY A COLLECTIVE AGREEMENT BETWEEN LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 AND THE RESPONDENT, EFFECTIVE MAY 1ST, 1969." (4 EMPLOYEES IN THE UNIT).

HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES AS CONTAINED IN THE APPLICANT'S TELEGRAM OF JUNE 18, 1969, AND THE RESPONDENT'S LETTER DATED JUNE 16, 1969 AND HAVING FURTHER REGARD TO SECTION 6(1) OF THE LABOUR RELATIONS ACT.

16230-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. ONTARIO CULVERT AND METAL PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WATERLOO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (29 EMPLOYEES IN THE UNIT).

16231-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. UNIVERSITY SHEET METAL PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (5 EMPLOYEES IN THE UNIT).

16234-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (APPLICANT) v. PARRY SOUND DISTRICT GENERAL HOSPITAL (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT IN ITS BOILER ROOM AT PARRY SOUND, SAVE AND EXCEPT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (5 EMPLOYEES IN THE UNIT).

16239-69-R: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA AFL-CIO-CLC (APPLICANT) v. GEORGE ANGUS CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE, CLERICAL AND SALES STAFF." (26 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16240-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. NATIONAL CONTAINERS (CENTRAL) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (25 EMPLOYEES IN THE UNIT).

16241-69-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) v. TOWN & COUNTRY CATERING (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN WELLINGTON COUNTY, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER AND OFFICE STAFF." (2 EMPLOYEES IN THE UNIT).

16242-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) v. LOBLAW GROCETERIAS CO., LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (19 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 392).

16243-69-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. E. A. LISK & SONS, LIMITED (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS BAKERY AT EGANVILLE, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (45 EMPLOYEES IN THE UNIT).

(CERTIFIED).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS I.G.A. FOODLINER AT EGANVILLE, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (13 EMPLOYEES IN THE UNIT).

(CERTIFIED).

UNIT #3: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS THEATRE AT EGANVILLE, SAVENAND EXCEPT THE MANAGER, PERSONS ABOVE THE RANK OF MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD. (3 EMPLOYEES IN THE UNIT).

(DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 394).

16246-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 498 (APPLICANT) v. STRADWICK INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE INSTALLATION OF CARPETS IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

16247-69-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) v. CHARTERWAYS CO. LTD. (RESPONDENT).

UNIT: "ALL PERSONS EMPLOYED BY THE RESPONDENT IN CONNECTION WITH THE OPERATION OF THE CITY TRANSIT SYSTEM IN THE CITY OF NORTH BAY, SAVE AND EXCEPT FOREMEN AND DESPATCHERS, PERSONS ABOVE THE RANK OF FOREMAN AND DESPATCHER, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (16 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16254-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE WELLAND COUNTY BOARD OF EDUCATION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK WHO ARE ENGAGED IN MAINTENANCE, SERVICES, AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERINTENDENTS, PERSONS ABOVE THE RANK OF SUPERINTENDENT AND OFFICE STAFF." (88 EMPLOYEES IN THE UNIT).

16260-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. TAMBLYN-PRITCHARD-JOHNSTON CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

16262-69-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. CANADIAN CANNERS LIMITED (RESPONDENT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (INTERVENER).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE COMPANY AT ITS PLANT NO. 1 IN DRESDEN, ONTARIO, SAVE AND EXCEPT SUPERVISORS, THOSE ABOVE THE RANK OF SUPERVISOR, PLANT NURSE, QUALITY CONTROL ANALYST, QUALITY CONTROL SHIFT SUPERVISOR, SECRETARY TO THE AREA MANAGER, SECRETARY TO THE PERSONNEL SUPERVISOR, PERSONNEL ASSISTANT, HORTICULTURALIST, FIELDMEN, EXPERIMENTAL PLOT MEN, STUDENTS EMPLOYED UNDER A CO-OPERATIVE TRAINING PROGRAM, AND MANAGEMENT TRAINEES COVERED BY THE COMPANY ORIENTATION AND TRAINING PROGRAM." (8 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

16263-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. TIMISKAMING BOARD OF EDUCATION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERINTENDENT, PERSONS ABOVE THE RANK OF SUPERINTENDENT AND OFFICE STAFF." (54 EMPLOYEES IN THE UNIT).

16273-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. CONTINUOUS COLOUR COAT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, HEAD PRODUCTION CHEMIST, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (34 EMPLOYEES IN THE UNIT).

16275-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 249 (APPLICANT) v. P. A. SHERWOOD WINDOWS LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

16276-69-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, U.A.W. (APPLICANT) v. INTERNATIONAL HARVESTER COMPANY OF CANADA, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS MOTOR TRUCK BRANCH SERVICE CENTRE AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (34 EMPLOYEES IN THE UNIT).

16277-69-R: TRENTON CONSTRUCTION WORKERS ASSOCIATION, LOCAL No. 52, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. MAURICE H. ROLLINS CONSTRUCTION LIMITED, COMMERCIAL DIVISION (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES, AND CONSTRUCTION LABOURERS IN THE TOWNSHIP OF HOPE IN THE COUNTY OF DURHAM AND THE TOWNSHIPS OF SOUTH MONAGHAN, HAMILTON, HALDIMAND AND ALNWICK IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO SECTION 6(1) OF THE LABOUR RELATIONS ACT).

16280-69-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION 880, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. METRO VENDING (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT NON-WORKING SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANKS OF NON-WORKING SUPERVISOR AND FOREMAN, AND OFFICE STAFF." (5 EMPLOYEES IN THE UNIT).

16281-69-R: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, RESTAURANT, CAFETERIA AND TAVERN EMPLOYEES UNION, LOCAL 254 (APPLICANT) v. CRAWLEY & McCRAKEN COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE HYDRO-ELECTRIC POWER GENERATING STATION IN THE TOWNSHIP OF WALPOLE, SAVE AND EXCEPT MANAGER, EXECUTIVE CHEF, PERSONS ABOVE THE RANK OF MANAGER AND EXECUTIVE CHEF AND OFFICE STAFF." (3 EMPLOYEES IN THE UNIT).

16284-69-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. GRASAM SERVICES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PRESTON, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (2 EMPLOYEES IN THE UNIT).

16285-69-R: SHOPMEN'S LOCAL UNION No. 757 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, (AFFILIATED TO THE AFL-CIO & CLC) (APPLICANT) v. WHITBY WELDING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WHITBY, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND CLERICAL EMPLOYEES, AND EMPLOYEES ENGAGED IN FIELD ERECTION, INSTALLATION OR CONSTRUCTION WORK." (11 EMPLOYEES IN THE UNIT).

16289-69-R: GENERAL TRUCK DRIVERS' UNION LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. CENTENNIAL WAREHOUSING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN AJAX AND TORONTO, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, HIRED OPERATORS, AND PERSONS WORKING TWENTY (20) HOURS OR LESS PER WEEK." (8 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES AND TO THEIR REPRESENTATIONS AT THE HEARING).

16291-69-R: TEAMSTERS LOCAL UNION 990 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. H. J. O'CONNELL LIMITED (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (5 EMPLOYEES IN THE UNIT).

16310-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION #1450 (APPLICANT) v. TAMBLYN-PRITCHARD-JOHNSTON CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH, VICTORIA AND THE PROVISIONAL COUNTY OF HALIBURTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

16318-69-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (APPLICANT) v. KEYSTONE CONTRACTORS LTD. (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF McDougall AND THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, ALL IN THE TERRITORIAL DISTRICT OF PARRY SOUND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

16328-69-R: BRICKLAYERS, MASONS AND PLASTERERS' INTERNATIONAL UNION OF AMERICA, LOCAL No. 12 (APPLICANT) v. STRADWICKS TILE COMPANY LTD. (RESPONDENT).

UNIT: "ALL MARBLE, TILE AND TERRAZZO MECHANICS AND THEIR APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WELLINGTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

16342-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) v. BUMEDA STEEL PRODUCTS LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

16137-69-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) v. TORONTO GENERAL HOSPITAL (RESPONDENT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT AT ITS PREMISES IN METROPOLITAN TORONTO, SAVE AND EXCEPT THE ASSISTANT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF ASSISTANT CHIEF ENGINEER." (18 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	15
NUMBER OF PERSONS WHO CAST BALLOTS	15
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	11
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	4

16156-69-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO, CLC (APPLICANT) v. CHARLES WILSON LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT OFFICE STAFF, ZONE MANAGERS, DISTRICT MANAGERS, FOREMEN, PERSONS ABOVE THE RANKS OF ZONE MANAGER, DISTRICT MANAGER AND FOREMAN, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (128 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	129
NUMBER OF PERSONS WHO CAST BALLOTS	125
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	76
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	49

16198-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (APPLICANT) v. SOUTHAM MURRAY (A DIVISION OF THE SOUTHAM PRINTING COMPANY LIMITED) (RESPONDENT) v. TORONTO PRINTING PRESSMEN & ASSISTANTS' UNION NO. 10 (AUXILIARY GROUP) (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT, SAVE AND EXCEPT THE CHIEF ENGINEER, PERSONS ABOVE THE RANK OF CHIEF ENGINEER, AND PERSONS COVERED BY OTHER COLLECTIVE AGREEMENTS IN FORCE WITH THE RESPONDENT." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	4
NUMBER OF PERSONS WHO CAST BALLOTS	4
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3
NUMBER OF BALLOTS MARKED IN FAVOUR OF CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101	1

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

15607-68-R: OPTICAL & PLASTIC TECHNICIANS & ALLIED WORKERS UNION LOCAL 67 OF U.H.C. & M.W.I.U.-C.L.C. (APPLICANT) v. IMPERIAL OPTICAL COMPANY LIMITED (RESPONDENT) v. THE DOLL & TOY WORKERS OF THE UNITED STATES AND CANADA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS LENS PLANTS IN METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (210 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	186
NUMBER OF PERSONS WHO CAST BALLOTS	173
NUMBER OF SPOILED BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	133
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	38

APPLICATIONS FOR CERTIFICATION DISMISSED DURING JUNE

NO VOTE CONDUCTED

15890-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. HOLLINGER MINES LIMITED (RESPONDENT). (82 EMPLOYEES).

16041-69-R: THE CARETAKERS AND MAINTENANCE ASSOCIATION FOR THE COUNTY OF PETERBOROUGH (APPLICANT) v. THE PETERBOROUGH COUNTY BOARD OF EDUCATION (RESPONDENT) v. CANADIAN UNION OF PUBLIC EMPLOYEES (INTERVENER). (154 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 362).

16116-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 597 (APPLICANT) v. O. J. GAFFNEY LIMITED (RESPONDENT). (17 EMPLOYEES).

16138-69-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL #151 (APPLICANT) v. THE COCHRANE-IROQUOIS FALLS BOARD OF EDUCATION (RESPONDENT). (5 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 368).

16143-69-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. GRAND RIVER CABLE T.V. LIMITED (RESPONDENT). (3 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 369).

16164-69-R: CANADIAN BUSINESS MACHINE WORKERS UNION (APPLICANT) v. THE NATIONAL CASH REGISTER COMPANY OF CANADA, LIMITED (RESPONDENT) v. CANADIAN OFFICE EMPLOYEES UNION No. 159, N.C.C.L. (INTERVENER). (92 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 375).

16167-69-R: LOCAL 804, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, (A.F.L. - C.I.O. - C.L.C.) (APPLICANT) v. GRAND RIVER CABLE T. V. LIMITED (RESPONDENT). (21 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 380).

16179-69-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. LAKEFIELD COLLEGE SCHOOL (RESPONDENT). (7 EMPLOYEES).

16193-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. JACK PEARCEY OIL BURNER SERVICE (MONARCH FUELS LTD.) (RESPONDENT). (2 EMPLOYEES).

16229-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL No. 506 (APPLICANT) v. CONNOLLY MARBLE, MOSAIC AND TILE COMPANY LIMITED (RESPONDENT). (24 EMPLOYEES).

16232-69-R: OXFORD COUNTY CUSTODIANS, MAINTENANCE AND TRANSPORTATION ASSOCIATION (APPLICANT) v. OXFORD COUNTY BOARD OF EDUCATION (RESPONDENT). (123 EMPLOYEES).

16255-69-R: TORONTO PRINTING PRESSMEN & ASSISTANTS' UNION LOCAL No. 10 (APPLICANT) v. PHOTO ENGRAVERS & ELECTROTYPEERS LIMITED (RESPONDENT). (38 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 395).

16278-69-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (APPLICANT) v. CATKEY CONSTRUCTION LIMITED (RESPONDENT). (9 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

15747-68-R: WAREHOUSEMEN AND MISCELLANEOUS, DRIVERS LOCAL UNION 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. MOORE GLASS LTD. (RESPONDENT).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF THE RESPONDENT'S PLANT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD." (26 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	23
NUMBER OF PERSONS WHO CAST BALLOTS	13
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	7
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	6

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

15938-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. CENTRAL BURNER SERVICE LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	4
NUMBER OF PERSONS WHO CAST BALLOTS	4
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	1
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	3

15983-69-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) v. WEYER-HAEUSER CANADA LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN ITS SAW MILL OPERATIONS IN THE TOWNSHIP OF JOCKO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (34 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	34
NUMBER OF PERSONS WHO CAST BALLOTS	34

NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	15
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	19

16061-69-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS (APPLICANT) v. EQUIPMENT EXPRESS LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF MARKHAM, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (18 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	15
NUMBER OF PERSONS WHO CAST BALLOTS	15
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	4
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	11

16083-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. SIGNODE CANADA LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (116 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	113
NUMBER OF PERSONS WHO CAST BALLOTS	111
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	41
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	69

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING JUNE

16213-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) v. SCHOK BETON QUEBEC INCORPORATED (RESPONDENT). (2 EMPLOYEES).

16217-69-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. CANADIAN DREDGE & DOCK LIMITED (RESPONDENT). (2 EMPLOYEES).

16221-69-R: TRENTON CONSTRUCTION WORKERS ASSOCIATION, LOCAL No. 52, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. MAURICE H. ROLLINS CONSTRUCTION LIMITED, COMMERCIAL DIVISION (RESPONDENT). (4 EMPLOYEES).

16252-69-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (APPLICANT) v. FALGER & PEEL (JOINT VENTURE) (RESPONDENT). (20 EMPLOYEES).

16270-69-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) v. DAVID & DESLAURIERS LIMITED (PART-TIME EMPLOYEES) (RESPONDENT). (12 EMPLOYEES).

16271-69-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) v. DAVID & DESLAURIERS LIMITED (FULL-TIME EMPLOYEES) (RESPONDENT). (24 EMPLOYEES).

16311-69-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. P. L. ROBERTSON MANUFACTURING CO. LIMITED (RESPONDENT). (47 EMPLOYEES).

16315-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. CLEAVER, BROOKS, JOHNSON, PATTERSON, WILLIAMS INDUSTRIAL OIL BURNER SERVICE LTD. (RESPONDENT). (7 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED
OF DURING JUNE

15839-68-R: LOUIS JOSEPH ASSELTINE, WILFRED JAMES CALLOW AND KATHLEEN MARY CAMP ON BEHALF OF THE EMPLOYEES OF PROCTOR-LEWYT DIVISION OF SCM (CANADA) LIMITED, (FORMERLY PROCTOR-SILEX LIMITED) (APPLICANTS) v. INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO-CLC (RESPONDENT) v. PROCTOR-LEWYT DIVISION OF SCM (CANADA) LIMITED (FORMERLY PROCTOR-SILEX LIMITED) (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF PROCTOR-LEWYT DIVISION OF SCM (CANADA) LIMITED (FORMERLY PROCTOR-SILEX LIMITED) AT PICTON SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (260 EMPLOYEES IN THE UNIT).

NUMBER OF PERSONS WHO CAST BALLOTS	194
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	55
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	139

15960-69-R: DOMINION WINDOW & FLOOR SERVICE LTD. (APPLICANT) v.
SERVICE EMPLOYEES UNION, LOCAL 204 (RESPONDENT). (GRANTED).

UNIT: "ALL EMPLOYEES OF THE APPLICANT REGULARLY EMPLOYED FOR NOT
MORE THAN 24 HOURS PER WEEK WHO ARE EMPLOYED BY DOMINION WINDOW &
FLOOR SERVICE LTD. AT ONTARIO PAPER COMPANY AT THOROLD, PROVINCIAL
PAPER COMPANY AT THOROLD, KIMBERLY-CLARK COMPANY AT THOROLD,
BREWER'S RETAIL (MAIN OFFICE) AT ST. CATHARINES AND ANTHES IMPERIAL
AT ST. CATHARINES, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE
RANK OF SUPERVISOR." (17 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	10
NUMBER OF PERSONS WHO CAST BALLOTS	10
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	3
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	7

16017-69-R: EMPLOYEES OF AGILIS CORPORATION LIMITED OP/A SUBURBAN
SANITATION (APPLICANTS) v. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS, LOCAL UNION 880 (RESPONDENT) v. AGILIS CORPORATION LIMITED
OP/A SUBURBAN SANITATION (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF AGILIS CORPORATION LIMITED, SAVE AND EXCEPT
FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF."
(8 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	8
NUMBER OF PERSONS WHO CAST BALLOTS	8
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	1
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	6
NUMBER OF SPOILED BALLOTS	1

16267-69-R: BEVERLEY HAYDEN, OF 953 COLBORNE STREET, IN THE CITY OF
BRANTFORD IN THE COUNTY OF BRANT, AND ROBERT BEAUREGARD, OF 50 FULTON
STREET, IN THE CITY OF BRANTFORD IN THE COUNTY OF BRANT (APPLICANTS)
v. UNITED AUTO WORKERS UNION, LOCAL 397 OF 10 KING STREET, IN THE
CITY OF BRANTFORD IN THE COUNTY OF BRANT (RESPONDENT) v. MELNOR MANU-
FACTURING LIMITED (INTERVENER). (16 EMPLOYEES).

16274-69-R: ABC STEEL BUILDINGS LIMITED (APPLICANT) v. UNITED
STEELWORKERS OF AMERICA (RESPONDENT). (30 EMPLOYEES). (GRANTED).

APPLICATION FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING
JUNE

16248-69-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL-CIO: CLC (APPLICANT) v. COCHRANE-DUNLOP HARDWARE LIMITED, NORTH BAY, ONTARIO (RESPONDENT) v. NORTH BAY GENERAL WORKERS UNION, LOCAL 1603, C.L.C. (PREDECESSOR TRADE UNION). (GRANTED).

APPLICATION FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING
JUNE

16214-69-U: PIGOTT CONSTRUCTION COMPANY LIMITED (APPLICANT) v. NICHOLAS ZACOTA ET AL (RESPONDENTS). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 399).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING JUNE

15963-69-U: FRASER-BRACE ENGINEERING COMPANY LIMITED (APPLICANT) v. PAUL EMILE ALBERT ET AL (RESPONDENTS). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 404).

15972-69-U: THE BRICKLAYERS, MASONS AND TILESETTERS' UNION LOCAL NO. 2 ONTARIO (AFFILIATED WITH THE BRICKLAYERS, MASONS, PLASTERERS INTERNATIONAL UNION OF AMERICA) FORMERLY CALLED THE BRICKLAYERS' UNION NO. 2 (APPLICANT) v. TORONTO CONSTRUCTION ASSOCIATION AND MEMBERS AS APPEARING ON THE ATTACHED LIST (RESPONDENTS). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 406).

16111-69-U: KAZY KARPAS AND LILLIE KARPAS, CARRYING ON BUSINESS UNDER THE NAME AND STYLE OF CENTRAL HOTEL (APPLICANT) v. RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL-CIO-CLC LOCAL 448 AND PETER KOLBASKA, GEORGE DURHAM, JOHN HENSEN AND EDWIN FOX (RESPONDENTS). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 409).

16212-69-U: INTERNATIONAL UNION OF ELECTRICAL RADIO, AND MACHINE WORKERS (APPLICANT) v. CANADIAN GYPSUM COMPANY LIMITED (RESPONDENT). (GRANTED).

16226-69-U: PIGOTT CONSTRUCTION COMPANY LIMITED (APPLICANT) v. NICHOLAS ZACOTA ET AL (RESPONDENTS). (WITHDRAWN).

16227-69-U: LIQUID CARBONIC CANADIAN CORPORATION LIMITED (APPLICANT) v. G. ANDREWS ET AL (RESPONDENTS). (WITHDRAWN),

16233-69-U: PIGOTT CONSTRUCTION COMPANY LIMITED (APPLICANT) v. T. FENWICK (RESPONDENT). (WITHDRAWN).

16245-69-U: S. I. GUTTMAN LIMITED (APPLICANT) v. LEO MARTEL AND LOCAL UNION 71 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (RESPONDENTS). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF

DURING JUNE

15845-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. SAMTEIT STORE FIXTURES & REFRIGERATION LIMITED (RESPONDENT). (GRANTED).

- AND -

15857-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. SAMTEIT STORE FIXTURES & REFRIGERATION LIMITED (RESPONDENT). (GRANTED).

- AND -

15864-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. SAMTEIT STORE FIXTURES & REFRIGERATION LIMITED (RESPONDENT). (GRANTED).

- AND -

15885-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. SAMTEIT STORE FIXTURES & REFRIGERATION LIMITED (RESPONDENT). (GRANTED).

(CONSOLIDATED APPLICATIONS).

(SEE INDEXED ENDORSEMENT PAGE 410).

16079-69-U: LOCAL 280 OF THE HOTEL AND RESTAURANT EMPLOYEES¹ AND BARTENDERS¹ INTERNATIONAL UNION (COMPLAINANT) v. THE SAVARIN LIMITED (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 412).

16150-69-U: MISS RUTH WAYNE (COMPLAINANT) v. MR. WILLINEGGAR (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 416).

16190-69-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, LOCAL 1002, AFL:CIO:CLC (COMPLAINANT) v. H. GRAY LIMITED (RESPONDENT). (WITHDRAWN).

16203-69-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. McGRAW-EDISON OF CANADA LIMITED (RESPONDENT). (WITHDRAWN).

16219-69-U: DELTA CARPENTERS LIMITED (APPLICANT) v. TONY MICHAELS AND THE ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRONWORKERS, LOCAL 721 (RESPONDENTS). (DISMISSED).

16250-69-U: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (COMPLAINANT) v. BROADVIEW POULTRY FARMS, LTD. (RESPONDENT). (WITHDRAWN).

16287-69-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. INDALPRIME LIMITED (RESPONDENT). (WITHDRAWN).

APPLICATION FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

16286-69-M: ELECTRIC CONTROL & ENGINEERING CO., LTD., DOWNSVIEW, ONTARIO (COMPANY) AND THE INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS' AFL-CIO-CLC., (IUE.AFL.CIO.CLC.) AND ITS LOCAL 584 (UNION). (GRANTED).

APPLICATIONS UNDER SECTION 47A DISPOSED OF DURING JUNE

15684-68-M: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL 647 (APPLICANT) v. MAMMY'S WONDER BAKERIES (A DIVISION OF GENERAL BAKERIES LIMITED) HAMILTON; MAMMY'S WONDER BAKERIES (A DIVISION OF GENERAL BAKERIES LIMITED) ST. CATHARINES; GENERAL BAKERIES LIMITED; GENERAL TRUCK DRIVERS' UNION LOCAL 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA; RETAIL, WHOLESALE BAKERY & CONFECTIONERY WORKERS' UNION, LOCAL 461, OF THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (RESPONDENTS). (GRANTED).

UNIT #1: "ALL ROUTE SALESMEN, SPECIAL DELIVERY DRIVERS, TRANSPORT DRIVERS, GARAGE EMPLOYEES, SPARE SALESMEN AND SHIPPERS OF THE RESPONDENT WORKING AT HAMILTON, SAVE AND EXCEPT FOREMEN OR ROUTE SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN OR ROUTE SUPERVISOR, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED NOT MORE THAN 24 HOURS PER WEEK."

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	29
NUMBER OF PERSONS WHO CAST BALLOTS	30
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	23
NUMBER OF BALLOTS MARKED IN FAVOUR OF RETAIL, WHOLESALE BAKERY & CON- FECTIONERY WORKERS' UNION, LOCAL 461	6

UNIT #2: "ALL ROUTE SALESMEN, SPECIAL DELIVERY DRIVERS, TRANSPORT DRIVERS, GARAGE EMPLOYEES, SPARE SALESMEN AND SHIPPERS OF THE RESPONDENT WORKING AT ST. CATHARINES, SAVE AND EXCEPT FOREMEN OR ROUTE SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN OR ROUTE SUPERVISOR, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED NOT MORE THAN 24 HOURS PER WEEK."

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	10
NUMBER OF PERSONS WHO CAST BALLOTS	10
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	7
NUMBER OF BALLOTS MARKED IN FAVOUR OF RETAIL, WHOLESALE BAKERY & CON- FECTIONERY WORKERS' UNION, LOCAL 461	3

15741-68-M: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL #956
(APPLICANT) v. TIMMINS BOARD OF EDUCATION AND THE TIMMINS HIGH
SCHOOL BOARD (RESPONDENTS). (GRANTED).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT TIMMINS BOARD OF EDUCATION
ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS SAVE AND EX-
CEPT SUPERINTENDENT, PERSONS ABOVE THE RANK OF SUPERINTENDENT,
OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24
HOURS PER WEEK." (40 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	40
NUMBER OF PERSONS WHO CAST BALLOTS	39
BALLOTS SEGREGATED AND NOT COUNTED	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	36
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	2

APPLICATION UNDER SECTION 63 (FINANCIAL STATEMENT REQUESTED BY TRADE
UNION MEMBER) DISPOSED OF DURING JUNE

16133-69-M: MIKE HAMILTON (APPLICANT) AND HENRY SCHMIDT (RESPONDENT).
(DISMISSED).

APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING

JJNE

15486-68-M: BRAMPTON TRUCK DRIVERS ASSOCIATION, LOCAL No. 54 AFFILIATED
WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. BRAMPTON
TRANSPORT LIMITED (RESPONDENT). (WITHDRAWN).

15914-68-M: THE CORPORATION OF THE BOROUGH OF YORK (APPLICANT) v. THE
CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL UNION 840 - BOROUGH OF
YORK STAFF (RESPONDENT).

15929-68-M: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL #67 (APPLICANT) v. THE CORPORATION OF THE CITY OF SAULT STE. MARIE (RESPONDENT).

16001-69-M: LOCAL UNION 412 - HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION (APPLICANT) v. SAULT WINDSOR HOTEL LIMITED (RESPONDENT).

16029-69-M: THE CORPORATION OF THE TOWN OF WHITBY (APPLICANT) v. CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL #53 (RESPONDENT).

16106-69-M: ST. THOMAS-ELGIN GENERAL HOSPITAL, ST. THOMAS, ONTARIO (APPLICANT) v. LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U. (RESPONDENT).

JURISDICTIONAL DISPUTE

16086(A)-69-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 506 AND LOCAL 527 (COMPLAINANTS) v. OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL 124 AND BEMAC PROTECTIVE COATING LIMITED (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 429).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

14937-68-R: JAMES MOIR (APPLICANT) v. BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 415, (RESPONDENT) v. GORMAN ECKERT AND COMPANY LIMITED (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 438).

15382-68-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW (APPLICANT) v. NORTH AMERICAN PLASTICS CO. LIMITED, MICHAEL LADNEY, WILLIAM LATHAM, PETER EMANUEL AND FRANK CORCORAN (RESPONDENTS). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 439).

15909-68-U: AMALGAMATED CLOTHING WORKERS OF AMERICA, CLC AFL-CIO (COMPLAINANT) v. PEARL LAUNDRY CO. LIMITED (RESPONDENT). (REQUEST DENIED).

INDEXED ENDORSEMENTS

12984-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE GOVERNORS OF THE UNIVERSITY OF TORONTO (RESPONDENT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (INTERVENER #1) v. BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 204 (INTERVENER #2) v. LOCAL UNION 46, THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (INTERVENER #3) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F.W. MURRAY.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG, C.F. KITCHEN, D. AYLWARD AND W. ACTON FOR THE APPLICANT, W. COOK, J. POWADIUK AND J. PARKER FOR THE RESPONDENT, NO ONE FOR INTERVENER #1, NO ONE FOR INTERVENER #2, NO ONE FOR INTERVENER #3, NO ONE FOR THE OBJECTORS.

DECISION OF THE BOARD: JUNE 25, 1969.

1. BY A DECISION OF THE BOARD DATED FEBRUARY 5TH, 1969, THE BOARD FOUND THAT THE NON-ACADEMIC OR NON-PROFESSIONAL EMPLOYEES OF THE UNIVERSITY LIBRARY ARE AN APPROPRIATE UNIT FOR COLLECTIVE BARGAINING.

2. IN THE SAME DECISION THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO AND REPORT ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT. THE APPLICANT AND THE RESPONDENT MET WITH THE EXAMINER FOR THE PURPOSE OF WORKING OUT AN AGREEMENT AS TO THE DESCRIPTION OF THE BARGAINING UNIT PRIOR TO DETERMINING THE NUMBER OF EMPLOYEES IN THE UNIT AS OF THE DATE OF THE MAKING OF THE APPLICATION. THE APPLICANT AND THE RESPONDENT, HOWEVER, WERE UNABLE TO REACH AGREEMENT ON THE DESCRIPTION OF THE UNIT. THE BOARD THEREFORE LISTED THE MATTER FOR CONTINUATION OF HEARING FOR THE PURPOSE OF ENTERAINING THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE DESCRIPTION OF THE BARGAINING UNIT AND ALL OTHER OUTSTANDING ISSUES. THE HEARING TOOK PLACE ON JUNE 18TH, 1969.

3. HAVING CONSIDERED THE REPRESENTATIONS OF THE APPLICANT AND THE RESPONDENT AS TO THE APPROPRIATE UNIT AS OF THE DATE OF THE MAKING OF THE APPLICATION, THE BOARD FINDS THAT ALL NON-PROFESSIONAL EMPLOYEES OF THE UNIVERSITY OF TORONTO LIBRARY, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. FOR PURPOSES OF CLARITY, THE BOARD NOTES THE AGREEMENT OF THE APPLICANT AND THE RESPONDENT THAT SECRETARIES EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS IN THE LIBRARY OFFICE, THE BOOK SELECTION AREA, THE HUMANITIES AND SOCIAL SCIENCES AREA, THE SCIENCE AND MEDICINE AREA AND THE TECHNICAL SERVICES AREA ARE NOT INCLUDED IN THE BARGAINING UNIT.

5. FOR PURPOSES OF CLARITY, THE BOARD NOTES THAT THE EMPLOYEES OF THE UNIVERSITY LIBRARY INCLUDE THOSE LOCATED AT THE MAIN BUILDING AND AT 175 BEDFORD ROAD ON THE ST. GEORGE STREET CAMPUS. ALSO INCLUDED IN THE BARGAINING UNIT ARE THOSE EMPLOYEES LOCATED AT THE NEW COLLEGE LIBRARY, THE LAIDLAW LIBRARY AT UNIVERSITY COLLEGE, THE LIBRARY AT SIDNEY SMITH HALL AND THE ENGINEERING LIBRARY IN THE GALBRAITH BUILDING, WHICH ARE ALL ON THE ST. GEORGE STREET CAMPUS. ALL OF THE EMPLOYEES EMPLOYED IN THE ABOVE LOCATIONS FORM A PART OF THE UNIVERSITY LIBRARY UNDER THE CONTROL AND DIRECTION OF THE CHIEF LIBRARIAN.

6. FOR PURPOSES OF CLARITY, THE BOARD NOTES THAT EMPLOYEES IN THE FACULTY AND DEPARTMENTAL LIBRARIES, EMPLOYEES WORKING ON THE ONTARIO NEW UNIVERSITY LIBRARIES PROJECT AND EMPLOYEES WORKING AT ERINDALE COLLEGE AND SCARBOROUGH COLLEGE ARE NOT INCLUDED IN THE BARGAINING UNIT.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON APRIL 20TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

15412-68-R: OTTAWA TYPOGRAPHICAL UNION NO. 102 (APPLICANT) V. THE OTTAWA CITIZEN, A DIVISION OF SOUTHAM PRESS LIMITED (RESPONDENT) V. OTTAWA NEWSPAPER GUILD, LOCAL 205 (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS A. MAIN AND F. W. MURRAY.

APPEARANCES AT THE HEARING: IAN SCOTT, ALLAN HERITAGE AND JAMES DUFFY FOR THE APPLICANT, D. CHURCHILL-SMITH AND S. G. ROBERTS FOR THE RESPONDENT, NO ONE FOR THE INTERVENER, NO ONE FOR THE OBJECTORS.

DECISION OF THE BOARD: JUNE 18, 1969.

1. FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED MAY 26TH, 1969, THIS MATTER WAS LISTED FOR CONTINUATION OF HEARING TO HEAR THE REPRESENTATIONS OF THE PARTIES AS TO WHAT EFFECT SHOULD BE GIVEN TO THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT.
2. THE FIVE PERSONS EXAMINED WERE CLASSIFIED BY THE RESPONDENT AS FOREMAN. IT APPEARS FROM THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT THAT ALL FIVE SPEND A PORTION OF THEIR WORK DAY DOING PHYSICAL WORK ALONG WITH EMPLOYEES IN THE BARGAINING UNIT. THE APPLICANT REQUESTED THE BOARD TO FIND THAT THE APPROPRIATE BARGAINING UNIT WOULD EXCLUDE "NON-WORKING FOREMEN" AND PERSONS ABOVE THAT RANK. WHILE IT IS RECOGNIZED THAT THE APPLICANT UNION HAS APPLIED FOR ITS CRAFT BARGAINING UNIT AND THE USUAL CRAFT DESCRIPTION WOULD EXCLUDE NON-WORKING FOREMEN, THE BOARD IN MAKING ITS DETERMINATION AS TO THE EXCLUSION OF THE FIVE PERSONS IN DISPUTE WOULD MAKE SUCH DETERMINATION BY ASCERTAINING WHETHER THE FIVE PERSONS EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. IN ORDER TO MAKE THIS DETERMINATION, THE BOARD MUST APPLY ITS USUAL CRITERIA. IF THE BOARD FINDS THAT ANY OF THE FIVE PERSONS IN DISPUTE EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT THEN SUCH PERSONS ARE NOT EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE ACT AND ARE THEREFORE NOT ELIGIBLE FOR INCLUSION IN ANY BARGAINING UNIT THAT THE BOARD FINDS TO BE APPROPRIATE. IN OTHER WORDS, IF ANY OF THE FIVE PERSONS ARE WHAT WOULD OTHERWISE BE DESCRIBED AS WORKING FOREMEN AND THEY ARE FOUND TO EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT, THE BOARD HAS NO JURISDICTION TO INCLUDE SUCH PERSONS IN THE BARGAINING UNIT.
3. HAVING REGARD TO ALL THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AND HAVING APPLIED THE CRITERIA ENUNCIATED BY THE BOARD IN THE FALCONBRIDGE NICKEL MINES LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1966, p. 379, THE BOARD FINDS THAT B. BOURRET, A PERSON CLASSIFIED BY THE RESPONDENT AS MACHINIST FOREMAN, SPENDS 90 TO 95 PER CENT OF HIS TIME DOING PHYSICAL WORK AND THAT AS OF THE DATE THE APPLICATION WAS MADE DID NOT HAVE THE POWER TO MAKE INDEPENDENT DECISIONS WHICH COULD ADVERSELY AFFECT THE EMPLOYMENT RELATIONSHIP OF ANY EMPLOYEE WORKING UNDER HIS AUTHORITY. THE BOARD ACCORDINGLY FINDS THAT MR. BOURRET DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND THE BOARD THEREFORE DECLARES THAT MR. BOURRET IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT HEREINAFTER DESCRIBED. THE BOARD FURTHER FINDS THAT J. G. JOHNSTON, J. L. MAGEE, R. GORLEY AND C. J. MCGAHEY SPEND BETWEEN 20 AND 35 PER CENT OF THEIR TIME DOING PHYSICAL WORK AND SPEND THE MAJORITY OF THEIR TIME PERFORMING SUPERVISORY FUNCTIONS AND HAVE THE POWER TO MAKE INDEPENDENT DECISIONS WHICH WOULD AFFECT THE EMPLOYMENT RELATIONSHIP OF THE EMPLOYEES UNDER THEIR CONTROL AND HAVE THE ADDITIONAL POWER TO MAKE EFFECTIVE RECOMMENDATIONS CONCERNING THEIR

EMPLOYMENT RELATIONSHIP. THE BOARD ACCORDINGLY FINDS THAT MESSRS. JOHNSTON, MAGEE, GORLEY AND MCGAHEY EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND THE BOARD ACCORDINGLY DECLares THAT THEY ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT HEREINAFTER DESCRIBED.

4. FOR REASONS SIMILAR TO THE REASONS GIVEN BY THE BOARD IN THE G.M. & H.O. HOLMES LIMITED CASE, O.L.R.B. MONTHLY REPORT, OCTOBER 1968, P. 759, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN COMPOSING ROOM WORK AT OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. FOR PURPOSES OF CLARITY, THE BOARD FURTHER DECLares THAT PERSONS CLASSIFIED BY THE RESPONDENT AS PROOFREADERS AND TELETYPE-SETTER PERFORATOR OPERATORS ARE NOT INCLUDED IN THE BARGAINING UNIT.

6. THE BOARD DIRECTS THAT THE REGISTRAR CAUSE THE BALLOTS CAST BY ALL EMPLOYEES IN THE BARGAINING UNIT TO BE COUNTED AND REPORT TO THE BOARD.

15567-68-R: INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS (APPLICANT) v. INTERNATIONAL HARVESTER COMPANY OF CANADA LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: J. V. GOODISON AND WM. FRASER FOR THE APPLICANT, E. L. STRINGER AND J. KIRBY FOR THE RESPONDENT, MURRAY C. DILLON FOR THE OBJECTORS.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER O. HODGES: JUNE 25, 1969.

1. THIS IS AN APPLICATION FOR CERTIFICATION. THERE WAS FILED IN THIS MATTER A DOCUMENT SIGNED BY CERTAIN EMPLOYEES OF THE RESPONDENT AS INDICATIVE OF OPPOSITION TO THIS APPLICATION. THE OBJECTORS' COUNSEL CALLED TWO EMPLOYEES AS WITNESSES WHO TESTIFIED CONCERNING THEIR KNOWLEDGE AS TO THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE DOCUMENT FILED AND THE MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED. WHILE THE WITNESSES SATISFIED THE BOARD CONCERNING THE MANNER IN WHICH THE SIGNATURES WERE AFFIXED TO THE DOCUMENT, THE SAME CANNOT BE SAID AS TO THE ORIGINATION OF THE DOCUMENT. THE WITNESS WHO WROTE THE HEADING ON THE DOCUMENT TESTIFIED THAT THE DOCUMENT WAS PREPARED BY HIM FOLLOWING A TELEPHONE CALL HE RECEIVED FROM MR. DILLON, THE OBJECTORS' COUNSEL.

THE WITNESS HAD NO PRIOR KNOWLEDGE OF MR. DILLON BEFORE THE TELEPHONE CALL HE RECEIVED, HOWEVER, MR. DILLON INFORMED THE WITNESS THAT HE WAS CALLING THE WITNESS ON INSTRUCTIONS FROM ANOTHER EMPLOYEE WHO WAS EMPLOYED BY THE RESPONDENT IN THE RESPONDENT'S MISSISSAUGA BRANCH. MR. DILLON ASKED THE WITNESS IF HE WAS PREPARED TO CIRCULATE A PETITION IN OPPOSITION TO THE UNION AMONG HIS FELLOW EMPLOYEES AT THE SCARBOROUGH BRANCH. FOLLOWING THIS CONVERSATION THE DOCUMENT WAS PREPARED AND CIRCULATED FOR SIGNATURE. THE WITNESS WHO ORIGINALLY INSTRUCTED MR. DILLON WAS NOT CALLED TO TESTIFY CONCERNING THE CIRCUMSTANCES SURROUNDING HIS GIVING MR. DILLON THE INSTRUCTIONS DESCRIBED ABOVE.

2. ON THE EVIDENCE BEFORE US, WE MUST FIND THAT WHILE THERE WAS EVIDENCE AS TO THE PREPARATION OF THE DOCUMENT FILED THE DOCUMENT WAS ORIGINATED AT THE DIRECT REQUEST OF MR. DILLON WHO, AS WE UNDERSTAND IT, RECEIVED HIS INSTRUCTIONS FROM AN EMPLOYEE AT ANOTHER BRANCH. THE EMPLOYEE AT THE MISSISSAUGA BRANCH WAS NOT IDENTIFIED NOR WAS THE BOARD ABLE TO ASCERTAIN WHAT PARTICIPATION, IF ANY, MEMBERS OF MANAGEMENT HAD WITH RESPECT TO THAT EMPLOYEE'S OPPOSITION TO THE UNION'S ORGANIZING CAMPAIGN. WHILE IT DOES NOT NECESSARILY FOLLOW THAT MANAGEMENT PARTICIPATED IN THE ORIGINATION OF THE PETITION, HOWEVER, THERE IS AN ONUS OF PROOF ON THE OBJECTORS TO ESTABLISH TO THE BOARD'S SATISFACTION ALL THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE MATERIAL FILED. SINCE IT IS CLEAR FROM THE EVIDENCE THAT ALL THE CIRCUMSTANCES ARE NOT BEFORE THE BOARD, THE OBJECTORS HAVE ACCORDINGLY FAILED TO MEET THE ONUS ON THEM IN THIS REGARD.

3. FOR THE REASONS SET OUT ABOVE AND HAVING REGARD TO THE REASONS FOR DECISION IN THE CHERNEY BROTHERS CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1965, p. 25, THE BOARD IS NOT PREPARED TO FIND THAT THE DOCUMENT SUBMITTED TO THE BOARD AS INDICATIVE OF OPPOSITION BY SOME OF THE EMPLOYEES OF THE RESPONDENT TO THE APPLICATION OF THE APPLICANT WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS CASE.

4. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #4 DEFINED IN THE BOARD'S DECISION OF MAY 26TH, 1969 IN THIS MATTER, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JANUARY 28TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

5. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO THE EMPLOYEES IN BARGAINING UNIT #4.

DECISION OF BOARD MEMBER H. F. IRWIN:

JUNE 25, 1969.

1. I DISSENT.

2. AT THE BOARD HEARING IN THIS MATTER ON JUNE 16TH, IN REPLY TO A QUESTION PUT TO HIM BY BOARD MEMBER HODGES, THE WITNESS, JOHN FRASER, STATED THAT HE HAD HEARD ABOUT THE UNION THROUGH OTHER EMPLOYEES AND THE EMPLOYEES AT THE SCARBOROUGH BRANCH OF THE RESPONDENT HAD DISCUSSED AMONGST THEMSELVES WHETHER OR NOT THEY WANTED A UNION. HE FURTHER STATED THAT MR. MURRAY C. DILLON, WHO WAS ACTING AS COUNSEL FOR THE PETITIONERS, HAD TELEPHONED HIM AT HIS HOME. ONE OF THE EMPLOYEES AT THE MISSISSAUGA BRANCH HAD GIVEN DILLON HIS NAME. DILLON INFORMED FRASER THAT HE WAS REPRESENTING SOME OF THE EMPLOYEES AT THE MISSISSAUGA BRANCH AND HAD BEEN REQUESTED TO ASCERTAIN IF THE EMPLOYEES AT THE SCARBOROUGH BRANCH WOULD LIKE HIM TO REPRESENT THEM ALSO. FRASER FURTHER STATED THAT DILLON TOLD HIM WHAT TO DO AND HE WROTE OUT THE HEADING ON THE PETITION.

3. IN REPLY TO A QUESTION PUT TO HIM BY MR. GOODISON, WHO REPRESENTED THE APPLICANT UNION AT THE HEARING, FRASER STATED WITHOUT HESITATION THAT MR. DILLON'S FEE WOULD BE SHARED BY THE OTHER EMPLOYEES CONCERNED.

4. THERE ISN'T A JOT OF EVIDENCE OR EVEN A SUGGESTION THAT THE RESPONDENT EMPLOYER PARTICIPATED IN ANY WAY WHATEVER IN THE ORIGINATION, PREPARATION OR CIRCULATION OF THE PETITION FILED IN OPPOSITION TO THE APPLICATION. THIS IS THE PRIMARY PURPOSE OF THE BOARD'S ENQUIRY INTO THESE MATTERS. IF THE BOARD FELT THE EVIDENCE OF THE EMPLOYEE AT THE MISSISSAUGA BRANCH WAS MATERIAL TO MAKING ITS DECISION, THE CASE SHOULD HAVE BEEN ADJOURNED AND THE EMPLOYEE SUMMONED TO ATTEND AT A SUBSEQUENT HEARING WHEN THE BOARD COULD HAVE ENQUIRED INTO THE CIRCUMSTANCES THAT LED TO HIS GIVING MR. DILLON FRASER'S NAME.

5. IN THESE CIRCUMSTANCES AND HAVING REGARD TO ALL THE EVIDENCE, I BELIEVE THE OBJECTORS MET ALL THE REQUIREMENTS THAT COULD REASONABLY HAVE BEEN EXPECTED OF THEM AND I WOULD HAVE GIVEN WEIGHT TO THE PETITION. AS THIS WOULD REDUCE THE APPLICANT'S UNCHALLENGED MEMBERSHIP TO LESS THAN 55% OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #4, I WOULD HAVE DIRECTED THE TAKING OF A REPRESENTATION VOTE. THE EMPLOYEES WOULD BE ASKED IF THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT UNION.

15592-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v.
THE BOARD OF HEALTH OF THE YORK-OSHAWA DISTRICT HEALTH UNIT
(RESPONDENT).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES
AND H. F. IRWIN.

DECISION OF O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBER
O. HODGES: JUNE 2, 1969.

• • •

4. THE APPLICANT SEEKS A BARGAINING UNIT OF PUBLIC HEALTH EMPLOYEES AND REQUESTS THAT OFFICE EMPLOYEES, PUBLIC HEALTH INSPECTORS, REGISTERED NURSING ASSISTANTS AND DENTAL HYGIENISTS BE INCLUDED IN THE UNIT. THE RESPONDENT HAS PROPOSED THAT REGISTERED NURSING ASSISTANTS AND DENTAL HYGIENISTS SHOULD NOT BE INCLUDED IN THE BARGAINING UNIT. NO ONE APPEARED AT THE HEARING ON BEHALF OF EITHER THE REGISTERED NURSING ASSISTANTS OR DENTAL HYGIENISTS TO OBJECT TO THEIR INCLUSION IN THE BARGAINING UNIT.

5. THE PROBLEMS POSED BY THESE PERSONS IS OF INCREASING CONCERN TO THIS BOARD IN MAKING BARGAINING UNIT DETERMINATIONS. THE NEED FOR DIFFERENT FORMS OF SKILL AND KNOWLEDGE HAS RESULTED IN THE INCREASE OF INSTITUTES AND COURSES PRODUCING WHAT MAY BE LOOSELY REFERRED TO AS "TECHNICAL EMPLOYEES". TECHNICAL EMPLOYEES HAVE A VARIETY OF SKILLS AND PERFORM A WIDE RANGE OF FUNCTIONS AND DUTIES AS A RESULT OF HAVING ACQUIRED SPECIALIZED KNOWLEDGE AND SKILLS IN VARIOUS COURSES BEYOND CERTAIN GRADES IN SECONDARY SCHOOL. IN THIS CASE REGISTERED NURSING ASSISTANTS, DENTAL HYGIENISTS AND PUBLIC HEALTH INSPECTORS ARE IN THAT CATEGORY AND THE ARGUMENTS ADVANCED REQUESTING THE EXCLUSION OF THE REGISTERED NURSING ASSISTANTS AND DENTAL HYGIENISTS ARE SIMILAR TO ARGUMENTS SUBMITTED BY TECHNICAL EMPLOYEES IN OTHER CASES. SEE COMMUNICATION WORKERS OF AMERICA v. NORTHERN ELECTRIC COMPANY LIMITED ET AL 1969 FEBRUARY OLRC MTHLY. REP. 1153; BROWN & ROOT-NORTHROP v. UNITED AUTOMOBILE WORKERS (UNREPORTED NLRB MARCH 12, 1969).

6. THE FIRST ARGUMENT IS THAT TECHNICAL EMPLOYEES HAVE A SEPARATE COMMUNITY OF INTEREST FROM PERSONS WHO EXERCISE NON-TECHNICAL FUNCTIONS AND THAT THEY ARE A RECOGNIZABLE AND IDENTIFIABLE GROUP WHO CAN BE SEGREGATED BECAUSE OF THEIR SPECIAL SKILLS. IN THIS RESPECT THEIR PROBLEM IS NOT UNLIKE THAT OF EMPLOYEES WHO EXERCISE TECHNICAL SKILLS AND ARE MEMBERS OF A CRAFT AND DISTINGUISHABLE FROM OTHER EMPLOYEES. THESE TECHNICAL EMPLOYEES IN A SENSE ARE CONTEMPORARY CRAFT GROUPS.

7. THE SECOND ARGUMENT RAISED - AS IT WAS ON BEHALF OF DENTAL HYGIENISTS, IS THAT THESE PERSONS ARE QUASI-PROFESSIONAL AND BECAUSE OF THEIR EDUCATIONAL QUALIFICATIONS, THEY DO NOT HAVE A COMMUNITY OF INTEREST WITH OTHER NON QUASI-PROFESSIONAL EMPLOYEES. IMPLICIT IN THIS ARGUMENT IS THAT "PROFESSIONAL" PERSONS ARE EXCLUDED FROM THE PURVIEW OF THE LABOUR RELATIONS ACT PURSUANT TO SECTION 1(3)(A) AND THAT THE FUNCTIONS AND PROBLEMS OF "QUASI-PROFESSIONAL" EMPLOYEES ARE SIMILAR TO PROFESSIONAL PERSONS AND THEREFORE, WHILE THESE PERSONS ARE NOT EXCLUDED FROM THE PURVIEW OF THE ACT, THEY SHOULD AT LEAST BE EXCLUDED FROM CERTAIN BARGAINING UNITS.

8. WE ARE OF THE OPINION THAT THERE IS MERIT IN THESE ARGUMENTS BUT THAT EACH CASE MUST BE ASSESSED ON ITS OWN PARTICULAR FACTS. THEREFORE, IN THE INSTANT CASE, WE ARE NOT PREPARED TO FRAGMENT THE TECHNICAL EMPLOYEES BECAUSE TO DO SO WOULD CREATE A COLLECTIVE BARGAINING SITUATION WHERE THE RESPONDENT WOULD BE REQUIRED TO DEAL SEPARATELY WITH CLERICAL EMPLOYEES, PUBLIC HEALTH INSPECTORS, REGISTERED NURSING ASSISTANTS AND DENTAL HYGIENISTS. IN ADDITION, EACH OF THESE GROUPS WOULD COMPRIZE A SMALL NUMBER OF EMPLOYEES. WHERE THERE ARE DIFFERENT TYPES OF TECHNICAL EMPLOYEES IT MAY BE ADVISABLE THAT ALL TECHNICAL EMPLOYEES BE PLACED IN ONE BARGAINING UNIT - BUT THIS CONCEPT WILL DEPEND ON THE FACTS OF THE INDIVIDUAL CASE. SEE UNITED STEELWORKERS OF AMERICA V. FALCONBRIDGE NICKEL MINES LIMITED, 1966 SEPT. OLRB MTHLY. REP. 379 AT 387. NURSES ASSOCIATION BROWNSVILLE GENERAL HOSPITAL V. BROWNSVILLE GENERAL HOSPITAL, 1967 JANUARY OLRB MTHLY. REP. 776 AT 778.

9. THE BOARD HAS ALSO DEALT SPECIFICALLY WITH BOTH REGISTERED NURSING ASSISTANTS AND DENTAL HYGIENISTS. REGISTERED NURSING ASSISTANTS HAVE BEEN INCLUDED IN A HEALTH UNIT IN AN APPLICATION FOR CERTIFICATION BETWEEN THE APPLICANT AND THE BOARD OF HEALTH OF THE YORK COUNTY HEALTH UNIT, WHICH WAS ONE OF THE PREDECESSORS OF THE RESPONDENT IN THIS CASE. SEE CANADIAN UNION OF PUBLIC EMPLOYEES AND BOARD OF HEALTH OF THE YORK COUNTY HEALTH UNIT AND NURSES ASSOCIATION YORK COUNTY HEALTH UNIT AND GROUP OF EMPLOYEES BOARD FILE No. 12621-66-R. EXHIBIT 4 IN THESE PROCEEDINGS WAS THE COLLECTIVE AGREEMENT ENTERED INTO BETWEEN THE APPLICANT AND THE BOARD OF HEALTH OF THE YORK COUNTY HEALTH UNIT. THAT AGREEMENT MAKES SPECIFIC PROVISIONS FOR REGISTERED NURSING ASSISTANTS AND DENTAL HYGIENISTS AND WE CAN ONLY CONCLUDE THAT THE INCLUSION OF REGISTERED NURSING ASSISTANTS IN A BARGAINING UNIT COMPOSED OF PUBLIC HEALTH EMPLOYEES DOES NOT INHIBIT SUCCESSFUL COLLECTIVE BARGAINING ON BEHALF OF THE REGISTERED NURSING ASSISTANTS OR ON BEHALF OF THE EMPLOYEES WITH WHOM THEY ARE ASSOCIATED IN A HEALTH UNIT.

10. WITH RESPECT TO DENTAL HYGIENISTS WE NOTE THAT THEY WERE INCLUDED IN THE "HEALTH UNIT" OF THE CORPORATION OF THE COUNTY OF HALTON PURSUANT TO A CERTIFICATION BY THIS BOARD. HOWEVER, THERE WAS NO OBJECTION TO THE INCLUSION OF DENTAL HYGIENISTS IN THAT CASE. IN ADDITION, THE BOARD REFUSED TO CERTIFY PUBLIC HEALTH INSPECTORS IN A SEPARATE BARGAINING UNIT IN A CASE WHERE THERE WERE OTHER EMPLOYEES INCLUDING DENTAL HYGIENISTS ASSOCIATED WITH THEM IN A HEALTH UNIT. THE ASSOCIATION OF PUBLIC HEALTH INSPECTORS WATERLOO COUNTY HEALTH UNIT v. WATERLOO COUNTY HEALTH UNIT, 1969 JANUARY OLRB MTHLY. REP. 1016. THE BOARD SAID IN THAT CASE:

"IN ADDITION TO THE HISTORY OF BARGAINING IF WE WERE TO CERTIFY THE APPLICANT IN THIS SITUATION IT WOULD BE OPEN TO THE DENTAL HYGIENISTS OR THE MAINTENANCE AND JANITORIAL EMPLOYEES TO MAKE SEPARATE APPLICATIONS FOR CERTIFICATION WHICH WOULD RESULT IN A MULTIPLICITY OF BARGAINING UNITS. IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE WE DO NOT FEEL THAT THE FRAGMENTATION OF THESE EMPLOYEES INTO SEPARATE BARGAINING UNITS WOULD BE CONDUCIVE TO INDUSTRIAL STABILITY."

11. IT THEREFORE APPEARS THAT BOTH REGISTERED NURSING ASSISTANTS AND DENTAL HYGIENISTS HAVE BEEN INCLUDED IN PUBLIC HEALTH BARGAINING UNITS, AND WE SEE NO PURPOSE IN EXCLUDING THEM IN THIS CASE. HAVING REGARD TO THE FACTS IN THE INSTANT CASE AND FOR THE REASONS ADVANCED WE FIND THAT BOTH THE REGISTERED NURSING ASSISTANTS AND THE DENTAL HYGIENISTS ARE INCLUDED IN THE BARGAINING UNIT WITH CLERICAL STAFF AND PUBLIC HEALTH INSPECTORS.

12. THE RESPONDENT FURTHER SUBMITTED THAT THERE SHOULD BE TWO SEPARATE BARGAINING UNITS COMPRISING:

- (A) ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF YORK WITH CERTAIN EXCEPTIONS;
- (B) ALL EMPLOYEES OF THE RESPONDENT IN THE CITY OF OSHAWA WITH CERTAIN EXCEPTIONS.

THE APPLICANT SUBMITTED THAT THE BARGAINING UNIT SHOULD BE COMPOSED OF "ALL EMPLOYEES OF THE RESPONDENT" WITH CERTAIN NAMED EXCEPTIONS.

13. THE BOARD WAS ADVISED THAT THE RESPONDENT WAS CREATED BY AN AMALGAMATION BETWEEN THE BOARD OF HEALTH OF THE YORK COUNTY HEALTH UNIT AND THE HEALTH FACILITIES OF THE CORPORATION OF THE CITY OF OSHAWA. THE AMALGAMATION WAS EFFECTED BY AN AGREEMENT BETWEEN THE TWO AGENCIES. THE ADMINISTRATIVE OFFICES OF THE RESPONDENT ARE LOCATED IN

OSHAWA. IN YORK COUNTY THERE ARE 4 SUB OFFICES LOCATED AT NEW-MARKET, SUTTON, RICHMOND HILL AND STOUFLVILLE. NEWMARKET IS THE HEADQUARTERS IN YORK COUNTY AND THE OTHER OFFICES IN YORK COUNTY ARE WITHIN A RADIUS OF 25 MILES FROM NEWMARKET. IN OSHAWA THE HEALTH UNIT IS LOCATED AT 179 SIMCOE STREET BUT THE MAIN ADMINISTRATIVE OFFICE FOR BOTH OSHAWA AND YORK IS LOCATED AT 50 CENTRE STREET WHICH IS THE HEADQUARTERS FOR THE RESPONDENT'S OVERALL OPERATIONS. THE EMPLOYEES OF THE RESPONDENT, EXCEPT THE CLERICAL STAFF, ARE NOT CONFINED TO OFFICES BUT PERFORM SERVICES OVER A WIDE GEOGRAPHIC AREA. FOR EXAMPLE, THE DENTAL HYGIENISTS IN YORK COUNTY EXAMINE ALL THE CHILDREN IN YORK COUNTY FROM KINDERGARTEN TO GRADE FIVE AND HEALTH CLINICS ARE HELD THROUGHOUT THE COUNTY.

14. LOCATED AT THE CENTRAL ADMINISTRATIVE OFFICES ARE THE DIRECTOR AND MEDICAL OFFICER OF HEALTH, THE DIRECTOR OF PUBLIC HEALTH NURSING SERVICES, THE DIRECTOR OF ENVIRONMENTAL HEALTH SERVICES, THE ADMINISTRATOR AND CLERICAL SERVICES. THE ACCOUNTING IS DONE AND THE BOOKS ARE KEPT AT THE CENTRAL OFFICE. OVER-ALL POLICY MATTERS INCLUDING PERSONNEL POLICY EMANATE FROM THE CENTRAL OFFICE WHILE ORDINARY ROUTINE MATTERS ARE HANDLED BY THE LOCAL OFFICES. THERE IS SOME EVIDENCE OF MINIMAL INTERCHANGE OF EMPLOYEES AND FURTHER EVIDENCE THAT HIRING IS DONE AT THE CENTRAL OFFICE.

15. IN THE YORK UNIT AND THE OSHAWA UNIT THE SENIOR SUPER-VISORY POSITION IS THE ASSOCIATE MEDICAL OFFICER OF HEALTH. IN BOTH YORK AND OSHAWA THERE IS AN ENVIRONMENTAL HEALTH SERVICES SECTION, SUPERVISED BY A CHIEF PUBLIC HEALTH INSPECTOR, A CLERICAL SECTION HEADED BY AN OFFICE MANAGER, AND A PUBLIC HEALTH NURSING SERVICES SECTION. IN YORK THERE IS AN ASSISTANT DIRECTOR OF PUBLIC HEALTH NURSING WHILE IN OSHAWA THERE IS ONLY A SUPER-VISOR IN CHARGE OF THE PUBLIC HEALTH AND NURSING SERVICES SECTION. IN BOTH YORK AND OSHAWA THERE IS A STAFF OF DENTAL HYGIENISTS WHO RECEIVE INSTRUCTIONS FROM THE ACTING ADMINISTRATOR IN OSHAWA.

16. ONE OF THE OBJECTIONS TO ESTABLISHING THE COMPREHENSIVE BARGAINING UNIT IS THAT THERE IS A GEOGRAPHIC SEPARATION BETWEEN THE TWO UNITS. THERE IS NO DOUBT THAT GEOGRAPHY OR PHYSICAL LOCATION OF AN EMPLOYER'S OPERATIONS IS A FACTOR TO BE CONSIDERED IN DETERMINING BARGAINING UNITS. CONTEMPORARY MEANS OF COMMUNICA-TION, METHODS OF TRAVEL, AND ACCESS BETWEEN SEPARATE PARTS OF AN EMPLOYER'S OPERATIONS SHOULD BE CONSIDERED WHEN GEOGRAPHY BECOMES A FACTOR. IN THIS CASE GEOGRAPHY POSES NO PROBLEM BECAUSE OF THE AVAILABILITY OF MODERN HIGHWAYS BETWEEN THE CENTRES, THE READY COMMUNICATION AND THE FACT THAT THE NATURE OF THE OPERATION IS TO SERVICE A LARGE GEOGRAPHIC AREA. THIS IS CORROBORATED BY THE EVI-DENCE AND REPRESENTATIONS WHICH INDICATE THAT GEOGRAPHY IS NOT OF PARTICULAR CONCERN TO THE RESPONDENT IN THE ADMINISTRATION OF THE HEALTH UNIT.

17. ANOTHER FACTOR PUT FORWARD BY THE RESPONDENT IS THAT THE WAGES FOR EMPLOYEES IN OSHAWA ARE HIGHER THAN THE WAGES OF EMPLOYEES IN YORK. WHILE THE WAGES DO DIFFER THERE IS A COMMUNITY OF INTEREST WITH RESPECT TO WORKING CONDITIONS AND HOURS OF WORK, WITH SLIGHT AND INSIGNIFICANT VARIATIONS. FOR EXAMPLE, THE WORKING CONDITIONS, RESPONSIBILITIES AND SKILLS OF PUBLIC HEALTH INSPECTORS ARE SIMILAR IN BOTH YORK AND OSHAWA; THIS ALSO APPLIES TO THE DENTAL HYGIENISTS AND REGISTERED NURSING ASSISTANTS. WE NOTE THE AGREEMENT CREATING THE HEALTH UNIT PROVIDES THAT "THE HIRING OF STAFF AND THE FORMULATION OF PERSONNEL POLICIES SHALL BE THE RESPONSIBILITY OF THE BOARD" WHICH MANAGES THE OVERALL HEALTH UNIT. IN ADDITION, THERE IS A CENTRAL BUDGET AND WE ASSUME THAT WAGES WILL BE PAID BY A CENTRAL TREASURY.

18. THE METHOD OF SUPERVISION WAS ALSO SUGGESTED AS A FACTOR IN DETERMINING SEPARATE BARGAINING UNITS. IN THE COUNTY OF YORK THERE IS AN ASSISTANT MEDICAL OFFICER OF HEALTH, AND THE RESPONDENT HAS SUBMITTED THAT PURSUANT TO THE PUBLIC HEALTH ACT R.S.O. 1960 c 321 s.34(3), HE HAS ALL THE POWERS AND SHALL PERFORM THE SAME DUTIES AS THE MEDICAL OFFICER OF HEALTH. THE ASSESSING OF AN APPROPRIATE BARGAINING UNIT DOES NOT DEPEND UPON THE IDENTITY OF THE INDIVIDUAL WHO SUPERVISES AND IS RESPONSIBLE FOR EXERCISING AUTHORITY, BUT WHETHER OR NOT DECISIONS CAN BE MADE WHICH ARE INDEPENDENT AND WHICH MAY HAVE NO RELEVANCE TO OTHER PARTS OF THE OVERALL OPERATIONS. WE THINK THAT TO SOME EXTENT THAT DECISION MAKING PROCESS IN THE INSTANT CASE IS INDEPENDENT. HOWEVER, IT IS ALSO RELEVANT THAT DECISIONS ARE MADE CENTRALLY WHICH AFFECT THE YORK COUNTY UNIT AND IN CERTAIN RESPECTS RENDER THE YORK COUNTY UNIT A SUBORDINATE UNIT FOR THE PURPOSE OF DECISION MAKING. FOR EXAMPLE, THE ENVIRONMENTAL HEALTH PROGRAMME WHICH WAS FILED AS AN EXHIBIT STATES "THE OBJECTIVE IS TO PROVIDE A COMPREHENSIVE PROGRAMME THROUGHOUT THE HEALTH DISTRICT. POLICY AND PROGRAMME WILL ORIGINATE FROM THE DIRECTOR FOLLOWING APPROVAL BY THE MEDICAL OFFICER OF HEALTH AND DISTRICT BOARD."

19. WE ARE OF THE OPINION THAT THE EVIDENCE AND FACTORS SUGGESTED BY THE RESPONDENT, WHEN VIEWED IN THEIR ENTIRETY, SUGGEST THAT SEPARATE BARGAINING UNITS MIGHT BE APPROPRIATE. WE ARE OF THE OPINION THAT, EVEN ASSUMING THAT THERE ARE SEPARATE BARGAINING UNITS, THE MORE COMPREHENSIVE BARGAINING UNIT IS PREFERABLE FOR THE REASONS HEREINAFTER SET FORTH.

20. THE DETERMINATION OF BARGAINING UNITS HAS BECOME MORE DIFFICULT BECAUSE OF THE CHANGES IN THE MODERN ECONOMY, THE PATTERNS OF UNION ORGANIZATION AND THE CHANGING NATURE AND DEVELOPMENT OF NEW INDUSTRIES AND SERVICE ORGANIZATIONS. THIS WILL REQUIRE IN MANY INSTANCES, A CASE-BY-CASE DETERMINATION OF BARGAINING UNITS WITH SOME ASSISTANCE FROM PAST PRACTICES AND

HISTORY. FOR EXAMPLE, CONCEPTS APPLICABLE TO A MANUFACTURING PLANT OR CONSTRUCTION BARGAINING UNIT ARE OF MINIMAL ASSISTANCE IN DETERMINING THE BARGAINING UNIT FOR THE PRESENT RESPONDENT WHICH IS A GOVERNMENTAL SERVICE AGENCY OPERATING OVER A WIDE GEOGRAPHIC AREA.

21. WHILE THERE IS MINIMAL RESEARCH INDICATING WHETHER LARGER OR SMALLER BARGAINING UNITS ARE MORE EFFECTIVE - AND PERHAPS THE TIME HAS BECOME PROPITIOUS FOR SUCH RESEARCH TO BE DONE - THERE IS A TENDENCY TO LARGER BARGAINING UNITS. HERMAN HAS SAID:

"THE CRITERIA THAT ARE NOW BEING APPLIED BY THE BOARDS MAY HAVE BEEN SUFFICIENT WHEN THE PROCESS OF CERTIFICATION WAS INITIATED, BUT TECHNOLOGICAL CHANGES ARE TAKING PLACE IN THE ECONOMY - CHANGES WHICH HAVE IMPORTANT REPERCUSSIONS ON INDUSTRIAL RELATIONS AND, SPECIFICALLY, ON BARGAINING UNITS - THAT WILL SOON MAKE THESE CRITERIA INADEQUATE. AUTOMATION AND TECHNOLOGICAL CHANGES WILL MAKE MANY OCCUPATIONS OBSOLETE. NEW OCCUPATIONS WILL ARISE, NECESSITATING THE TRANSFER OF EMPLOYEES FROM ONE DEPARTMENT TO ANOTHER, OR FROM ONE PLANT TO ANOTHER, AND SUCH TRANSFERS WILL, IN TURN, CAUSE PROBLEMS ASSOCIATED WITH SENIORITY. SOLUTIONS TO PROBLEMS SUCH AS THESE WILL BE EASIER TO FIND IF BARGAINING TAKES PLACE WITHIN A BROAD FRAMEWORK, POSSIBLY ON A COMPANY-WIDE OR INDUSTRY-WIDE BASIS. THIS IS AN AREA IN WHICH THE BOARDS, BY DISPLAYING SOME INITIATIVE IN UPDATING THEIR CERTIFICATION CRITERIA, COULD MAKE IMPORTANT CONTRIBUTIONS TO LABOUR RELATIONS.

COLEMAN HAS STATED THAT:

'THE BEST WAY MIGHT BE FOR THE GOVERNMENT TO LEAN TOWARD THE LARGEST PRACTICABLE UNITS IN FUTURE DETERMINATIONS, AND TO ENCOURAGE THE PARTIES TO ESTABLISHED RELATIONSHIPS TO BROADEN THEIR SENIORITY UNITS BEYOND SINGLE DEPARTMENTS OR PLANTS.'

BY CERTIFYING MORE MULTI-PLANT AND MULTI-EMPLOYER UNITS OF LARGE SIZE, ALTHOUGH SUCH ACTION HAS CERTAIN SHORTCOMINGS THAT ARE DISCUSSED IN PART II, CHAPTERS 5 AND 6, THE BOARDS COULD ENCOURAGE AND CONTRIBUTE TO GREATER LABOUR MOBILITY. THE LARGER

THE BARGAINING UNIT, THE GREATER THE POSSIBILITIES FOR EMPLOYEES TO MOVE FROM JOB TO JOB WITHIN THE UNIT WITHOUT LOSING THEIR SENIORITY RIGHTS. LARGE UNITS WOULD ALSO BE APPROPRIATE FROM THE POINT OF VIEW OF NEGOTIATIONS OF PENSION PROGRAMS, AND FOR DEALING WITH ISSUES SUCH AS RETRAINING OR GUARANTEED ANNUAL WAGES. LARGE UNITS WOULD ALSO BE IN STEP WITH THE TREND TOWARDS CENTRALIZATION OF ADMINISTRATIVE FUNCTIONS BY UNION AND MANAGEMENT; THIS TREND SEEMS ALSO TO BE CLOSELY RELATED TO THE GREATER UTILIZATION OF COMPUTERS IN INDUSTRY."

HERMAN: DETERMINATION OF THE APPROPRIATE BARGAINING UNIT 44 OTTAWA: QUEEN'S PRINTER, SEE ALSO JONES SELF DETERMINATION V. STABILITY OF LABOUR RELATIONS 58 MICH. LAW REV. 313 (1960). CANADIAN INDUSTRIAL RELATIONS, THE REPORT OF THE TASK FORCE ON LABOUR RELATIONS AT 142. OTTAWA: QUEEN'S PRINTER.

22. THE SUGGESTION OF LARGER BARGAINING UNITS DOES NOT INFRADE UPON THE CRITERION FOR ASSESSING AN APPROPRIATE BARGAINING UNIT PURSUANT TO SECTION 6 OF THE LABOUR RELATIONS ACT. THE BOARD IS NOT CONCERNED WITH WHETHER A BARGAINING UNIT IS MORE APPROPRIATE OR MOST APPROPRIATE BUT WHETHER THE BARGAINING UNIT APPLIED FOR IS APPROPRIATE. HOWEVER, THE EFFICACY OF COLLECTIVE BARGAINING AND THE CONCEPT OF LARGER BARGAINING UNITS BECOMES A MORE SIGNIFICANT FACTOR WHERE THE BOARD IS REQUIRED TO EXERCISE ITS DISCRETION AND CHOOSE BETWEEN APPROPRIATE BARGAINING UNITS.

23. IN THE INSTANT CASE THERE ARE ALSO THE FOLLOWING FACTORS:-

1. EMPLOYEE ORGANIZATION -

THE EMPLOYER HAS CENTRALIZED ITS ADMINISTRATIVE SET UP AND METHOD OF ORGANIZATION WITH CENTRALIZED POLICIES.

2. UNION ORGANIZATION -

THE APPLICANT WHICH HAD FORMERLY REPRESENTED THE SAME EMPLOYEES IN DIFFERENT BARGAINING UNITS SEEKS TO FOLLOW SUIT AND ADAPT ITSELF TO THE EMPLOYER'S ORGANIZATION.

3. THERE IS SOME INTERCHANGE OF EMPLOYEES AND THERE IS A CENTRALIZED HIRING AND PERSONNEL POLICY.

4. THERE IS A COMMUNITY OF INTEREST AMONG EMPLOYEES WITH RESPECT TO HOURS AND WORKING CONDITIONS.
5. EMPLOYEES DO SIMILAR WORK AND HAVE THE SAME TRAINING AND SKILLS IN BOTH YORK AND OSHAWA, E.G. PUBLIC HEALTH INSPECTORS.
6. THE EMPLOYEES ARE DESIROUS OF A MORE COMPREHENSIVE BARGAINING UNIT. S.6(1) OF THE LABOUR RELATIONS ACT PROVIDES THAT "THE WISHES OF THE EMPLOYEES AS TO THE APPROPRIATENESS OF THE UNIT" MAY BE A FACTOR.

WITH RESPECT TO THE WISHES OF THE EMPLOYEES WE NOTE THAT THERE WERE NO EMPLOYEES AT THE HEARING FOR THE PURPOSE OF MAKING REPRESENTATIONS AS TO THE APPROPRIATENESS OF THE BARGAINING UNIT. WE ASSUME THAT THE APPLICANT WHO REPRESENTS A NUMBER OF THE EMPLOYEES EXPRESSES THE WISHES OF THOSE EMPLOYEES AS THEIR REPRESENTATIVE AT THE HEARING. WE PAUSE HERE TO COMMENT ON A QUESTION DIRECTED TO THE WISHES OF THE EMPLOYEES, WHICH QUESTION WAS ASKED WHEN THE EXAMINER WAS REPORTING ON THE SKILLS AND RESPONSIBILITIES OF DENTAL HYGIENISTS AND NURSING ASSISTANTS. AT THAT TIME THE QUESTION WAS ASKED, AND DISALLOWED BY THE EXAMINER, AS TO WHETHER THE PARTICULAR EMPLOYEE WISHED TO BE INCLUDED IN THE BARGAINING UNIT. WE DO NOT THINK THAT QUESTION WAS WITHIN THE SCOPE OF THE EXAMINER'S INQUIRY. IN ANY EVENT, OBJECTIONS BY EMPLOYEES AS TO THE APPROPRIATENESS OF THE BARGAINING UNIT ARE OF GREATER ASSISTANCE TO THE BOARD WHEN THOSE PERSONS ATTEND AT THE HEARING AND MAKE REPRESENTATIONS WHEN THE BARGAINING UNIT IS DISCUSSED. DISALLOWANCE OF THE QUESTION BY THE EXAMINER IN THESE CIRCUMSTANCES WAS PROPER.

24. ACCORDINGLY, HAVING REGARD TO THE EVIDENCE, AND FOR THE REASONS STATED, WE FIND THAT ALL EMPLOYEES OF THE RESPONDENT SAVE AND EXCEPT REGISTERED AND GRADUATE NURSES, CHIEF PUBLIC HEALTH INSPECTOR, AND THOSE ABOVE THE RANK OF CHIEF PUBLIC HEALTH INSPECTOR, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
25. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT HAROLD ROBINSON, THE CHIEF PUBLIC HEALTH INSPECTOR AT OSHAWA IS EXCLUDED FROM THE BARGAINING UNIT.
26. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE CLASSIFICATION OF OFFICE MANAGER AND OFFICE SUPERVISOR ARE ONE AND THE SAME, AND THAT M. E. BOTHWELL, THE OFFICE MANAGER AT YORK AND M. DUNK, THE OFFICE SUPERVISOR AT OSHAWA, ARE EXCLUDED FROM THE BARGAINING UNIT BECAUSE THEY EXERCISE MANAGERIAL FUNCTIONS.

27. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT ELIZABETH FELLOWES IS INCLUDED IN THE BARGAINING UNIT, BUT THAT THE FOLLOWING PERSONS ARE EXCLUDED BECAUSE THEY ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS:

E. M. SOININEN - BOOKKEEPER AT OSHAWA
JEAN ELINES - PRIVATE SECRETARY TO
THE MEDICAL OFFICER OF
HEALTH AT NEWMARKET
ELIZABETH PUSKAS - PRIVATE SECRETARY TO
THE MEDICAL OFFICER OF
HEALTH AT OSHAWA.

28. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON FEBRUARY 3, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

29. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER H. F. IRWIN:

1. I DISSENT.

2. THE APPLICANT UNION HAS REQUESTED THAT THE BOARD FIND ONE BARGAINING UNIT TO BE APPROPRIATE. COUNSEL FOR THE RESPONDENT PRESENTED VERY ABLE AND COGENT ARGUMENT THAT THE BOARD SHOULD FIND THAT THERE ARE TWO APPROPRIATE BARGAINING UNITS. ONE UNIT WOULD CONSIST OF ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF YORK. THE SECOND UNIT WOULD CONSIST OF ALL EMPLOYEES OF THE RESPONDENT AT OSHAWA. HE STRESSED THE DIFFERENTIAL IN SALARIES AND WORKING CONDITIONS THAT GENERALLY PREVAIL IN THE HIGHLY INDUSTRIALIZED AREA OF OSHAWA AS COMPARED WITH THOSE IN THE TOWNS OF NEWMARKET, SUTTON, RICHMOND HILL AND STOUFFVILLE IN THE COUNTY OF YORK. ANOTHER IMPORTANT FACTOR IS THAT WHEREAS THERE ARE 34 EMPLOYEES OF THE RESPONDENT EMPLOYED IN THE COUNTY OF YORK, THERE ARE ONLY 15 OF ITS EMPLOYEES WORKING IN THE CITY OF OSHAWA.

3. IN THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO CASE, BOARD FILE No. 14781-68-R, DATED MAY 15, 1969 AT PARAGRAPH 8, THE BOARD STATED THAT WHERE THERE ARE CONFLICTING FACTORS WHICH ARE NOT READILY RESOLVED BY ANY OVERRIDING CONSIDERATION ON BOARD POLICY, THE BOARD MAY TAKE INTO CONSIDERATION IN DETERMINING THE APPROPRIATENESS OF A BARGAINING UNIT THE WISHES OF THE EMPLOYEES CONCERNED AS DETERMINED BY A REPRESENTATION VOTE PURSUANT TO PROVISIONS OF SECTION 6(1) OF THE LABOUR RELATIONS ACT.

4. HAVING REGARD TO ALL THE CIRCUMSTANCES OF THIS CASE AND THE PRINCIPLES ENUNCIATED BY THE BOARD IN THE HYDRO-ELECTRIC CASE, SUPRA, I WOULD HAVE EXERCISED THE BOARD'S DISCRETION UNDER SECTION 6(1) OF THE ACT AND DIRECTED THAT A VOTE BE CONDUCTED AMONGST THE EMPLOYEES OF THE RESPONDENT AFFECTED BY THIS APPLICATION. THE EMPLOYEES WOULD BE ASKED IF THEY WISH TO BARGAIN COLLECTIVELY AS ONE UNIT COMPRISING ALL EMPLOYEES OR TWO SEPARATE UNITS COMPRISING THE EMPLOYEES IN THE COUNTY OF YORK IN ONE UNIT AND THE EMPLOYEES IN THE CITY OF OSHAWA IN THE OTHER UNIT.

15637-68-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) v. CARA OPERATIONS LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: L. V. PATHÉ FOR THE APPLICANT, GEORGE FERGUSON, Q.C., AND J. G. FOY FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 5, 1969.

* * *

2. THE BOARD HAS CONSIDERED THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE REPORT OF THE EXAMINER IN THIS MATTER DATED MAY 2ND, 1969.

3. HAVING REGARD TO THE AGREEMENT OF THE PARTIES AS CONTAINED IN THE EXAMINER'S REPORT, THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS VOYAGEUR RESTAURANT IN THE TOWNSHIP OF WEST OXFORD, SAVE AND EXCEPT SUPERVISORS, SUPERVISOR-HOSTESSES, PERSONS ABOVE THE RANK OF SUPERVISOR OR SUPERVISOR-HOSTESS, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON FEBRUARY 13TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

5. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH REGARD TO THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 3.

6. IT HAS BEEN A LONG STANDING PRACTICE OF THE BOARD TO INCLUDE PERSONS REGULARLY EMPLOYED FOR LESS THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD IN A SINGLE BARGAINING UNIT. THIS CERTAINLY HAS BEEN VIRTUALLY THE INVARIABLE PRACTICE IN THE CASE OF RETAIL FOOD STORES WHERE MANY OF THE PERSONS WHO ARE EMPLOYED AS STUDENTS DURING THE SCHOOL VACATION PERIOD ARE THE SAME PERSONS WHO ARE REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK DURING THE REMAINDER OF THE YEAR.

7. IN THE RESTAURANT OPERATION OF THE RESPONDENT IN THE INSTANT CASE THERE IS EVIDENCE OF A SIMILAR SITUATION. THAT IS TO SAY, SOME OF THE PERSONS WHO ARE STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD ARE EMPLOYEES REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK DURING THE REMAINDER OF THE YEAR.

8. ALTHOUGH THE INFORMATION PROVIDED BY THE RESPONDENT WOULD INDICATE THAT THE NUMBER OF EMPLOYEES FALLING INTO BOTH CLASSIFICATIONS IS SOMEWHAT SMALLER THAN GENERALLY WOULD BE THE CASE IN RETAIL FOOD STORES, THE TWO SITUATIONS ARE NOT DIS-SIMILAR. IN ANY EVENT, IN OUR OPINION, THERE IS A SUFFICIENT COMMUNITY OF INTEREST BETWEEN EMPLOYEES IN BOTH CLASSIFICATIONS AS TO MAKE THEM APPROPRIATE FOR INCLUSION IN A SINGLE BARGAINING UNIT.

9. THE BOARD THEREFORE FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS VOYAGEUR RESTAURANT IN THE TOWNSHIP OF WEST OXFORD REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, SAVE AND EXCEPT SUPERVISORS, SUPERVISOR-HOSTesses, PERSONS ABOVE THE RANK OF SUPERVISOR OR SUPERVISOR-HOSTESS, AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

10. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON FEBRUARY 13TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

11. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH REGARD TO THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 9.

15676-68-R: NURSES' ASSOCIATION DEPARTMENT OF HEALTH BOROUGH OF ETOBICOKE (APPLICANT) v. THE CORPORATION OF THE BOROUGH OF ETOBICOKE (RESPONDENT).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: MISS K. R. LEWIS, MRS. JEAN M. LOWERY FOR THE APPLICANT; JOHN S. KCKINNON, RICHARD J. LANCASTER FOR THE RESPONDENT.

DECISION OF O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBER
J.E.C. ROBINSON: JUNE 11, 1969.

• • •

2. IN THIS CASE THE RESPONDENT SUBMITTED THAT NURSING SUPERVISORS SHOULD BE EXCLUDED FROM THE BARGAINING UNIT. NURSING SUPERVISORS HAVE BEEN BOTH INCLUDED AND EXCLUDED FROM BARGAINING UNITS BY THIS BOARD DEPENDING ON THE FACTS OF THE INDIVIDUAL CASE. THE DUTIES AND RESPONSIBILITIES OF THE NURSING SUPERVISORS IN THIS CASE BEAR A SIMILARITY IN CERTAIN IMPORTANT AREAS TO THE DUTIES AND RESPONSIBILITIES OF HEAD NURSES WHO WERE EXCLUDED FROM THE BARGAINING UNIT IN NURSES' ASSOCIATION BROCKVILLE GENERAL HOSPITAL v. BROCKVILLE GENERAL HOSPITAL 1967 JANUARY 776 AT 781, 782. IN THIS CASE AS IN THE BROCKVILLE GENERAL HOSPITAL CASE, THE EMPLOYEES CHALLENGED, REPRIMAND, PREPARE EVALUATIONS WHICH AFFECT MERIT INCREASES, ATTEND POLICY MEETING WHERE THEY MAKE RECOMMENDATIONS AND DEVOTE MOST OF THEIR TIME TO ADMINISTRATIVE AND SUPERVISORY DUTIES RATHER THAN TO NURSING CARE. IN ADDITION NURSING SUPERVISORS ASSIGN WORK, GRANT TIME OFF, AND RECEIVE HIGHER SALARIES. HAVING REGARD TO ALL THESE FACTORS WE FIND THAT NURSING SUPERVISORS EXERCISE MANAGERIAL FUNCTIONS AND ARE NOT INCLUDED IN THE BARGAINING UNIT.

3. THE BOARD THEREFORE FINDS THAT ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT SAVE AND EXCEPT SUPERVISORY NURSES AND PERSONS ABOVE THE RANK OF SUPERVISORY NURSE AND NURSES REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON FEBRUARY 25TH, 1969 THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77 (2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

5. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DISSENT OF BOARD MEMBER O. HODGES: JUNE 11, 1969.

I DISSENT FROM THAT PART OF THE BOARD'S DECISION WHICH EXCLUDES NURSING SUPERVISORS FROM THE BARGAINING UNIT. I WOULD HAVE APPLIED A DIFFERENT STANDARD IN ASSESSING THE DUTIES AND RESPONSIBILITIES OF THE NURSING SUPERVISORS, CONSIDERING THAT THEY ARE PROFESSIONAL EMPLOYEES. I THEREFORE FIND THAT NURSING SUPERVISORS ARE INCLUDED IN THE BARGAINING UNIT.

15705-68-R: THE LUMBER AND SAWMILL WORKERS' UNION LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. ELK LAKE PLANING MILL LTD. (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS H. F. IRWIN AND O. HODGES.

APPEARANCES AT THE HEARING: PAMELA A. THOMSON FOR THE APPLICANT; R. D. PERKINS, M. D. GILES FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 18, 1969.

1. IN THIS CASE A VOTE HAD BEEN DIRECTED BY THE BOARD AND AS A RESULT OF CERTAIN ALLEGATIONS MADE BY THE APPLICANT AND CERTAIN SUBMISSIONS MADE BY THE RESPONDENT, THE BALLOT BOX WAS SEALED AND CERTAIN BALLOTS WERE SEGREGATED. THE BOARD THEN HEARD EVIDENCE AND ARGUMENT DIRECTED TO THE ISSUES RAISED BY THE PARTIES.

2. THE APPLICANT SUBMITTED THAT MR. ARMAND BEDARD WAS EMPLOYED AS A SECURITY GUARD AND THAT PURSUANT TO SECTION 9 OF THE LABOUR RELATIONS ACT MR. BEDARD SHOULD NOT BE ALLOWED TO VOTE. THE EVIDENCE INDICATED THAT MR. BEDARD TOURS THE MILL SITE ON AN HOURLY BASIS TO CHECK THE POSSIBILITY OF FIRE. THERE WAS NO OTHER EVIDENCE RESPECTING THE DUTIES AND RESPONSIBILITIES OF MR. BEDARD.

3. HAVING REGARD TO THE EVIDENCE AND THE ARGUMENT, WE FIND THAT MR. BEDARD IS EMPLOYED AS A FIRE WATCHMAN AND NOT AS A GUARD WITHIN THE MEANING OF SECTION 9. THAT IS NOT TO SAY THAT IN CERTAIN CASES THE DUTIES AND RESPONSIBILITIES OF FIRE WATCHMEN MAY BE SUCH THAT THEY FALL WITHIN THE DEFINITION OF GUARD AS CONTAINED IN SECTION 9. SEE INTERNATIONAL Hod CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA v. GEO. A. CRAIN & SONS LTD. ET AL 63 CLLC 1205 (OLRB); CHANCE VAUGHT AIRCRAFT INCORPORATED v. UNITED PLANT GUARD WORKERS OF AMERICA 110 NLRB 1342; MCDONNEL AIRCRAFT CORPORATION v. NATIONAL BROTHERHOOD OF GUARDS AND WATCHMEN, LOCAL No. 1 ET AL 109 NLRB 967.

4. THE APPLICANT FURTHER SUBMITTED THAT SUBSEQUENT TO THE VOTERS' LIST BEING SETTLED, THE RESPONDENT LAID OFF A NUMBER OF PERSONS AND THEREFORE THE VOTE TAKEN DOES NOT REPRESENT THE DESIRES OF THE EMPLOYEES. THE EVIDENCE INDICATED THAT THE LAY-OFF RESULTED FROM THE SUDDEN CANCELLATION OF A LARGE ORDER WHICH MATERIALLY AFFECTED THE RESPONDENT'S BUSINESS. THE APPLICANT UNION WAS PROMPTLY ADVISED OF THE SITUATION AND EMPLOYEES WERE LAID OFF ACCORDING TO SENIORITY. THE RESPONDENT ATTEMPTED TO FIND SIMILAR EMPLOYMENT FOR SOME OF ITS EMPLOYEES WITH ANOTHER COMPANY AND SUBSEQUENTLY CERTAIN EMPLOYEES WERE RE-HIRED AS VACANCIES OCCURRED, ALBEIT SUBSEQUENT TO THE VOTE. IN THE CIRCUMSTANCES OF THIS CASE WE FIND NOTHING IMPROPER IN THE CONDUCT OF THE RESPONDENT WHICH WOULD PREVENT THE TRUE WISHES OF THE EMPLOYEES BEING REVEALED BY THE VOTE.

5. WE THEREFORE DETERMINE THAT THE BALLOT OF ARMAND BEDARD BE INCLUDED AMONG THE BALLOTS OF ELIGIBLE VOTERS AND BALLOT OF J. CHAMPION SHOULD NOT BE INCLUDED AMONG THE BALLOTS OF ELIGIBLE VOTERS.

6. THE REGISTRAR IS DIRECTED TO CAUSE THE BALLOTS CAST BY THOSE ELIGIBLE TO VOTE, TO BE COUNTED AND TO REPORT TO THE BOARD.

15710-68-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) v. FABRICON MANUFACTURING LIMITED (RESPONDENT) v. INDEPENDENT WIRE AND CABLE WORKERS UNION (INTERVENER).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER
O. HODGES: JUNE 18, 1969.

1. THE RESPONDENT CHARGES THAT THE APPLICANT OBTAINED CERTAIN EVIDENCE OF MEMBERSHIP USED IN THIS APPLICATION BY COERCION AND THREATS. IT SUBMITTED THAT THE BOARD SHOULD NOT ACCEPT ANY OF THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT AND SHOULD THEREFORE DISMISS THE APPLICATION.

2. THE EVIDENCE OF JIM LEMOIRE, AN EMPLOYEE OF THE RESPONDENT, WAS THAT HE WAS APPROACHED BY RAY HURL, ANOTHER EMPLOYEE WHO HE KNEW WAS A UNION ORGANIZER, TO SIGN A CARD FOR THE UNION AND WHEN HE DECLINED TO SIGN, HURL TOLD HIM IF HE DID NOT SUPPORT THE UNION, WHEN IT GETS IN HE WOULD NOT HAVE A JOB. LEMOIRE SAID HE'D WAIT AND SEE AND HAD NO FURTHER DISCUSSIONS WITH HURL OR ANYONE ELSE REPRESENTING THE UNION. HE ADMITTED THAT HE HAD SOME AUTHORITY OVER OTHER EMPLOYEES AT THE PLANT AND THAT HE WAS NOT REALLY SCARED BY WHAT HURL HAD TOLD HIM AS HE WAS JUST ANOTHER EMPLOYEE.

3. CLARENCE STEPHENSON TESTIFIED THAT HE WAS ASKED BY RAY HURL TO SIGN A CARD, WHO TOLD HIM IF HE DID NOT HE WOULD NOT HAVE A JOB. STEPHENSON TOOK OUT HIS PEN AND APPEARED TO BE ABOUT TO SIGN, BUT INSTEAD TORE UP THE CARD. STEPHENSON IS RELATED BY MARRIAGE TO THE PLANT MANAGER AND SAID THAT HE WAS NOT CONCERNED ABOUT HURL'S STATEMENT. MRS. NANCY ANDREWS, AN EMPLOYEE OF THE RESPONDENT FOR A YEAR AND A HALF, SAID THAT SHE WAS CONTINUALLY BOTH AT HER HOME AND AT WORK BOtherED BY MICHAEL O'HALLORAN TO SIGN A CARD, WHICH SHE HAD REFUSED TO DO. SHE HAD SOME PREVIOUS ARGUMENT WITH ANOTHER EMPLOYEE AND APPARENTLY MR. O'HALLORAN HAD REFERRED TO THAT INCIDENT AND SAID SHE COULD HAVE BEEN FIRED BUT IF SHE JOINED THE UNION IT WOULD PROTECT HER. THIS SHE THOUGHT WAS A THREAT TO HER BY TELLING HER SHE COULD HAVE LOST HER JOB. SHE WAS NOT FRIGHTENED ABOUT THIS. THEN ART FOLLAND CAME TO HER HOME AND ASKED HER TO SIGN, BUT SHE REFUSED AND SHUT THE DOOR IN HIS FACE. SHE SAID SHE WAS AFRAID SHE WOULD LOSE HER JOB. ON JANUARY 12TH SHE VISITED THE HOME OF JOYCE LAFEE AND ALSO PRESENT WERE O'HALLORAN AND FOLLAND. AFTER THAT O'HALLORAN HAD ASKED HER IF SHE HAD CHANGED HER MIND AND A WEEK LATER ON THE NIGHT SHIFT, NEAR THE ELEVATOR, ASKED HER AGAIN. HER HUSBAND HAD TOLD HER TO KEEP OUT OF IT.

4. DOUGLAS TYNER, A NATIONAL REPRESENTATIVE FOR THE UNION FOR TWENTY-TWO YEARS, WAS IN CHARGE OF THE ORGANIZATIONAL CAMPAIGN OF THE RESPONDENT'S EMPLOYEES AND KN EW RAY HURL WHO HAD WORKED THERE FROM OCTOBER TO DECEMBER WHEN HE HAD BEEN FIRED. TYNER SAID HE DID NOT KNOW THAT HURL HAD TOLD ANYONE THAT IF THEY DID NOT JOIN THE UNION THEY WOULD BE FIRED. THERE WAS A PREVIOUS CAMPAIGN DURING WHICH MRS. ANDREWS HAD SIGNED A CARD BUT SHE DID NOT DO SO THIS TIME, BUT HAD PREVIOUSLY RECEIVED A REGISTERED LETTER REVOKING HER MEMBERSHIP. HE THEN CALLED HER TO FIND OUT WHY SHE HAD REVOKED AND SHE TOLD HIM THAT SHE WAS FEARFUL OF LOSING HER JOB. HE ADMITTED THAT THE APPLICANT HAD USED HURL AS AN ORGANIZER WHILE HE WAS EMPLOYED.

5. MIKE O'HALLORAN, AN EMPLOYEE OF THE RESPONDENT SINCE NOVEMBER 1967, SAID THAT HE HAD WHILE HANDING OUT LEAFLETS ASKED MRS. ANDREWS TO JOIN AND HAD DONE SO AGAIN BY TELEPHONE AND ON JANUARY 12TH AT JOYCE LAFEE'S HOUSE. HE SAID HE DID NOT SPEAK TO HER AFTER THAT MAY ABOUT THE UNION. HE ADMITTED THAT HE REMINDED HER OF THE INCIDENT WITH THE OTHER EMPLOYEE AND THAT HE TOLD HER THAT POSSIBLY SHE COULD HAVE BEEN FIRED, AND THIS WAS ONE OF THE THINGS THE UNION LOOKS AFTER. HE DID NOT TELL HER SHE WOULD LOSE HER JOB IF SHE DID NOT SIGN A CARD AND THE UNION CAME IN. HE WENT TO JOYCE LAFEE'S HOUSE TO HAVE HER JOIN AND HAD BEEN THERE ABOUT 45 MINUTES WHEN MRS. ANDREWS ARRIVED, AND WHO THEN TOLD HIM THAT SHE DID NOT WANT TO JOIN AS SHE WAS AFRAID THAT THE COMPANY MIGHT FIND OUT ABOUT IT. HE SAID HE GAVE UP ON HER AFTER THAT,

BUT ART. FOLLAND WENT TO SEE HER. HE DENIED THAT HE DISCUSSED THE UNION WITH ANYONE IN THE PLANT. ARTHUR FOLLAND SAID THAT HE WAS WITH O'HALLORAN AT JOYCE LAFEE'S HOUSE AND HAD ASKED MRS. ANDREWS TO SIGN, AND THAT SHE HAD REFUSED BECAUSE OF "WHAT HAD HAPPENED BEFORE." HE SUBSEQUENTLY WENT TO HER HOUSE BUT SHE WOULD NOT TALK TO HIM AND HAD NOT ASKED HER TO JOIN AT ANY OTHER TIME; BUT AT THE PLANT SHE HAD ASKED HIM IF HE HAD BEEN TO HER HOUSE THE NIGHT BEFORE, TO WHICH HE REPLIED HE HAD NOT. SHE DID SAY THAT SHE WOULD NOT JOIN BECAUSE O'HALLORAN WAS GOING TO BE PRESIDENT.

6. THE EVIDENCE DISCLOSES THAT RAY HURL WAS A PROBATIONARY EMPLOYEE OF THE RESPONDENT AND VOLUNTEERED TO PARTICIPATE IN THE APPLICANT'S ORGANIZING CAMPAIGN. HE WAS NOT AN OFFICIAL OF THE UNION ALTHOUGH IT WAS ARGUED THAT AS AN ORGANIZER HE WAS AN AGENT FOR THE UNION AND THEREFORE THE UNION AS PRINCIPAL IS RESPONSIBLE FOR HIS ACTS. THERE IS, HOWEVER, NO EVIDENCE THAT THE UNION AUTHORIZED, ENCOURAGED OR CONDONED ANY OF HURL'S STATEMENTS MADE DURING THE CAMPAIGN NOR IN FACT KNEW OF THEM. IT IS EQUALLY OBVIOUS FROM THE EVIDENCE THAT NONE OF THE WITNESSES CALLED BY THE RESPONDENT WERE INTIMIDATED BY HIS STATEMENTS NOR ARE THEY CLAIMED AS MEMBERS BY THE APPLICANT. WHILE HURL WAS REPRESENTING THE UNION AS AN ORGANIZER IT IS APPARENT THAT THE WITNESSES REALIZED THAT HE HAD NO AUTHORITY OVER THEM AND HAD NO WAY OF CARRYING OUT ANY SUCH KIND OF STATEMENTS. WE FIND NOTHING IMPROPER IN THE REMARK OF MR. O'HALLORAN TO MRS. ANDREWS THAT SHE COULD HAVE BEEN FIRED CONCERNING A CERTAIN INCIDENT, AND THIS WAS THE TYPE OF THING THAT THE UNION LOOKED AFTER. SUCH A STATEMENT WOULD REFLECT A UNION'S NORMAL CONCERN IN SUCH MATTERS AS BARGAINING AGENT FOR A GROUP OF EMPLOYEES.

7. THERE ARE CONTRADICTIONS BETWEEN THE EVIDENCE OF THE WITNESSES FOR THE RESPONDENT AND THOSE OF THE APPLICANT, WHICH IN THE MAIN ARE NOT NECESSARY TO RESOLVE, AS THE ISSUE IS WHETHER WITHIN THE CONTEXT OF THE STATEMENTS MADE BY HURL AND O'HALLORAN AND THEIR ACTIVITIES CASTS DOUBT ON ALL OF THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT. WE DO NOT BELIEVE THAT THE EVIDENCE GOES TO THAT EXTENT AND WE POINT OUT THAT EVEN IF WE GAVE NO WEIGHT TO ANY OF THE SIX CARDS IN WHICH HURL WAS INVOLVED, THE APPLICANT WOULD STILL HAVE MORE THAN 55% OF EMPLOYEES AS MEMBERS. HAVING REGARD TO THE CIRCUMSTANCES IN WHICH THE STATEMENTS WERE MADE AND BY A PERSON WITH NO OFFICIAL CAPACITY IN THE UNION, WITH NO AUTHORITY OVER OTHER EMPLOYEES, WE ARE OF THE OPINION THAT NO REASONABLE PERSON WOULD BE INTIMIDATED OR COERCED. WE ARE THEREFORE NOT PREPARED TO GIVE WEIGHT TO THE RESPONDENT'S CHARGES IN THIS MATTER.

8. NO STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS HAS BEEN FILED WITH THE BOARD WITHIN THE TIME FIXED UNDER SUBSECTION 3 OF SECTION 42 OF THE BOARD'S RULES OF PROCEDURE FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED MAY 2ND, 1969.

9. THE BOARD HAS CONSIDERED ALL THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER RELATING TO THE DUTIES AND RESPONSIBILITIES OF THOSE PERSONS CLASSIFIED AS INSPECTORS AND THE REPRESENTATIONS OF THE RESPONDENT CONTAINED IN THE LETTER DATED MAY 12TH 1969. THE APPLICANT HAS APPLIED TO BE CERTIFIED FOR ALL EMPLOYEES OF THE RESPONDENT WITH CERTAIN EXCEPTIONS AS NOTED BELOW. ACCORDING TO THE EVIDENCE OF MR. BARRY FRASER, THREE QUARTERS OF HIS TIME IS SPENT ON INSPECTIONS THROUGHOUT THE PLANT AND THE BALANCE OF HIS TIME IN THE LABORATORY MAKING OUT HIS REPORTS. HE DOES NOT DO ANY WORK IN THE MAIN OFFICE. INSPECTIONS INCLUDE VISUAL AND ELECTRICAL TESTS ON ALL TYPES OF WIRE WHICH ARE MANUFACTURED IN THE PLANT AND ALSO CHECKING PRODUCTION MACHINES. WHEN WORK IS REJECTED THE FOREMAN CONCERNED IS ADVISED AND IT IS NOT UP TO THE INSPECTOR TO ENSURE THAT THE CORRECTIONS ARE MADE. INSPECTORS REPORT TO THE CHIEF INSPECTOR AND PRODUCTION PERSONNEL TO THE GENERAL FOREMAN. FRASER HAS TRAINED OTHER PERSONS ON THE JOB TO BECOME INSPECTORS, AND TO LEARN THE BASICS OF THE JOB WOULD TAKE ABOUT ONE MONTH. HE WORKS ON A ROTATING SHIFT BASIS; IS PAID BY SALARY WEEKLY AND HAS THE SAME VACATION BENEFITS AS PRODUCTION EMPLOYEES. THERE ARE THREE MALE INSPECTORS, ONE ON EACH SHIFT. AN INSPECTOR COULD SHUT DOWN A MACHINE IF HE THOUGHT THE WORK WAS BAD ENOUGH, BUT THE FINAL DECISION WOULD BE UP TO THE GENERAL FOREMAN. DIANNE SHEPHERD, EMPLOYED BY THE RESPONDENT AS AN INSPECTOR FOR SEVEN MONTHS WORK ON THE DAY SHIFT, RECEIVED A WEEKLY SALARY. ALL OF HER TIME IS SPENT IN THE PLANT EXCEPT FOR ONE HOUR PER DAY WHEN SHE ASSISTS IN THE LABORATORY TO SEE THAT NO ONE ENTERS WHEN THE VOLTAGE IS ON. SHE TESTS THE W.M. 130 WIRES IN AN AREA AWAY FROM THE PRODUCTON AREA AND WHERE THE REELS OF WIRE ARE BROUGHT TO HER FOR TESTING. SHE SAID SHE DID SOME CALCULATING IN THE OFFICE. SHE DID NOT HAVE ANY PREVIOUS EXPERIENCE AS AN INSPECTOR AND WAS TRAINED ON THE JOB BY ANOTHER INSPECTOR, WHICH TRAINING TOOK ABOUT ONE WEEK. THE TESTING AREA IN WHICH SHE WORKS IS APPROXIMATELY 50' FROM THE REWIND AREA WHERE THE WIRE IS TAKEN BEFORE GOING TO HER FOR INSPECTION.

10. WE ARE SATISFIED FROM THE EVIDENCE THAT INSPECTORS DO NOT EXERCISE MANAGERIAL FUNCTIONS NOR ARE EMPLOYED IN A CONFIDENTIAL CAPACITY WITH RESPECT TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. THE INSPECTORS ARE ENGAGED IN QUALITY CONTROL WORK IN THIS PLANT AND IT IS THE BOARD'S USUAL PRACTICE TO INCLUDE SUCH PERSONS IN A PRODUCTION BARGAINING UNIT SUBJECT TO THE CONSIDERATION OF SPECIAL CIRCUMSTANCES IN A

PARTICULAR CASE. SEE ALMA PAINT AND VARNISH CASE, OLRB MONTHLY REPORT, SEPTEMBER 1968, P. 551 AT P. 552. SEE ALSO AFFILIATED MEDICAL PRODUCTS CASE, OLRB MONTHLY REPORT, JANUARY 1969, P. 1014. WE HAVE HERE CONSIDERED THE FACTORS RELATING TO THE COMMUNITY OF INTEREST AS SET OUT IN THAT CASE, AND ALTHOUGH THE INSPECTORS REPORT TO A CHIEF INSPECTOR AND PERFORM SOME OF THEIR WORK IN THE LABORATORY, MOST OF THEIR TIME IS SPENT IN THE PRODUCTION AREA CARRYING OUT THE VARIOUS TESTS REQUIRED. THEIR REPORTS ARE THEN COMPLETED IN THE LABORATORY. DIANNE SHEPHERD WORKS IN THE PLANT AREA ALTHOUGH SEPARATED BY DISTANCE FROM THE PRODUCTION AREA. THEY DO PERFORM DIFFERENT WORK THAN THAT PERFORMED BY PRODUCTION EMPLOYEES AND USE SOME TYPES OF EQUIPMENT DIFFERENT FROM THAT OF THE PRODUCTION EMPLOYEES AND THERE IS NO INTERMINGLING BETWEEN THE TWO GROUPS. HOWEVER, THE CONDITIONS OF EMPLOYMENT ARE SIMILAR AND WE ARE NOT PERSUADED THAT THE POTENTIAL CONFLICT OF INTEREST BETWEEN THE INSPECTORS AND THE PRODUCTION EMPLOYEES, HAVING REGARD TO THEIR LACK OF EFFECTIVE CONTROL, SHOULD BE GIVEN WEIGHT IN ASSESSING THEIR COMMUNITY OF INTEREST. HAVING CONSIDERED ALL OF THE EVIDENCE AND FOR THE FOREGOING REASONS, WE ARE NOT SATISFIED THAT WE SHOULD DEPART FROM THE BOARD'S USUAL PRACTICE IN THIS REGARD AND WE FIND THAT THOSE PERSONS CLASSIFIED BY THE RESPONDENT AS INSPECTORS ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

11. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT TRENTON SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, SALES STAFF, STUDENTS EMPLOYED IN THE SCHOOL VACATION PERIOD AND STUDENTS ON A CO-OPERATIVE TRAINING PROGRAMME WITH A UNIVERSITY, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

12. FOR THE PURPOSE OF CLARITY THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT METHODS AND PRODUCTION CONTROL EMPLOYEES ARE INCLUDED IN THE OFFICE STAFF AND ARE NOT THEREFORE EMPLOYEES INCLUDED IN THE BARGAINING UNIT. ALSO FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT THE STATIONARY ENGINEER IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

13. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 11 ABOVE, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT. ON MARCH 4TH 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

14. A CERTIFICATE WILL ISSUE.

DECISION OF BOARD MEMBER H. F. IRWIN: JUNE 18, 1969.

1. I DISSENT FROM THE INCLUSION OF INSPECTORS IN THE BARGAINING UNIT BECAUSE OF THEIR LACK OF COMMUNITY OF INTEREST WITH THE PLANT EMPLOYEES.

2. IN THE ALMA PAINT AND VARNISH CASE, OLRB MONTHLY REPORT, SEPTEMBER 1968, P. 551 AT P. 553, THE BOARD SET OUT THE FACTORS TO BE CONSIDERED IN ASSESSING THE COMMUNITY OF INTEREST BETWEEN GROUPS OF EMPLOYEES IN THE SAME PLANT.

3. IN THE INSTANT CASE, THE INSPECTORS REPORT TO A CHIEF INSPECTOR AND NOT TO A FOREMAN AS DO PLANT EMPLOYEES. THEY WORK OUT OF THE LABORATORY OR AN OPEN AREA IN THE PLANT SET ASIDE FOR THAT PURPOSE. THEY ARE PAID A SALARY WHEREAS PLANT EMPLOYEES ARE HOURLY-RATED. AT THE FIRST HEARING COUNSEL FOR THE RESPONDENT STATED THAT THEIR VACATIONS WERE DIFFERENT FROM PLANT VACATIONS. NO EVIDENCE WAS LEAD TO CONTRADICT THIS STATEMENT.

4. IN THE CANADA WIRE AND CABLE CASE, FILE No. 14633-57-R, THE BOARD EXCLUDED FROM THE BARGAINING UNIT TECHNICIANS WORKING IN AND OUT OF THE LABORATORY. IN THE GENERAL WIRE AND CABLE CASE, FILE No. 12,623-66-R, THE BOARD EXCLUDED LABORATORY EMPLOYEES.

5. IN THE ABOVE CIRCUMSTANCES, I AM IMPELLED TO FIND THAT THE INSPECTORS' COMMUNITY OF INTEREST IS WITH THE LABORATORY EMPLOYEES RATHER THAN THE PLANT EMPLOYEES AND I WOULD SO FIND.

15851-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. SAMTEIT STORE FIXTURES & REFRIGERATION LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: L. A. MACLEAN AND FORTUNATO RAO FOR THE APPLICANT, W. G. PHELPS FOR THE RESPONDENT, WILBERT CROMWELL FOR THE OBJECTORS.

DECISION OF THE BOARD: JUNE 24, 1969.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF WILBERT CROMWELL AND THE LIST OF EMPLOYEES FILED BY THE RESPONDENT IN THIS MATTER. FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED APRIL 29TH, 1969, THIS MATTER WAS LISTED FOR HEARING TO HEAR THE REPRESENTATIONS OF THE PARTIES CONCERNING THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT.

2. AT THE REQUEST OF THE PARTIES, THE COMPOSITION OF THE DIVISION OF THE BOARD SEIZED WITH THIS MATTER WAS ALTERED AND J. D. O'SHEA WAS SUBSTITUTED AS CHAIRMAN OF THE DIVISION IN THE PLACE AND STEAD OF R. F. EGAN. THE SUBSTITUTION WAS MADE AT THE REQUEST OF THE PARTIES SO THAT THE COMPOSITION OF THE BOARD IN THE INSTANT CASE WOULD BE THE SAME AS THE COMPOSITION OF THE BOARD WHICH HEARD THE EVIDENCE IN FOUR SECTION 65 CASES INVOLVING THE SAME PARTIES (BOARD FILES 15845-68-U, 15857-68-U, 15864-68-U AND 15885-68-U). THE PARTIES FURTHER AGREED THAT THE BOARD SHOULD APPLY THE EVIDENCE IN THE FOUR SECTION 65 CASES TO THE INSTANT CASE, REPORTED IN THIS ISSUE OF THE O.L.R.B. MONTHLY REPORT ON PAGE 410.

3. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

4. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. HAVING GIVEN EFFECT TO THE AGREEMENT OF THE PARTIES REFERRED TO ABOVE AND HAVING CONSIDERED ALL THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AND THE TESTIMONY OF THE WITNESSES HEARD BY THE BOARD IN THE SECTION 65 CASES AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, THE BOARD FINDS THAT WILBERT CROMWELL, J. MALLIA AND J. WEAVER EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

6. THE BOARD ACCORDINGLY FINDS THAT IN LIGHT OF THE ABOVE FINDINGS, HAVING REGARD TO THE CIRCUMSTANCES SURROUNDING THE ORIGINATION AND CIRCULATION OF THE DOCUMENT SUBMITTED TO THE BOARD AS INDICATIVE OF OPPOSITION BY SOME OF THE EMPLOYEES OF THE RESPONDENT TO THE APPLICATION OF THE APPLICANT, WE ARE NOT PREPARED TO HOLD THAT THE DOCUMENT WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS MATTER.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 21ST, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

15967-69-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) v. INTERCITY FOOD SERVICES INC. (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS P. J. O'KEEFFE AND J. E. C. ROBINSON.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER
J. E. C. ROBINSON: JUNE 18, 1969.

• • •

3. THE APPLICANT CHALLENGED THE EXCLUSION FROM THE BARGAINING UNIT OF THOSE PERSONS CLASSIFIED BY THE RESPONDENT AS HOSTESS, ASSISTANT HOSTESS AND ASSISTANT MANAGER. HAVING REGARD TO THE REPORT OF THE EXAMINER THERE WERE NO PERSONS OCCUPYING THE CLASSIFICATIONS OF HOSTESS OR ASSISTANT HOSTESS AS OF THE DATE OF THE APPLICATION. ACCORDINGLY THE BOARD, FOLLOWING ITS USUAL PRACTICE, WILL NOT EXCLUDE SUCH CLASSIFICATIONS FROM THE BARGAINING UNIT. THE EXAMINER COMPLETED HIS INQUIRY ON THE LISTS OF EMPLOYEES AND ON THE DUTIES AND RESPONSIBILITIES OF THE ASSISTANT MANAGER. THE RESPONDENT REQUESTED TWO SEPARATE UNITS FOR FULL TIME PERSONS AND PART TIME PERSONS, TO WHICH THE APPLICANT AT THE HEARING AGREED.

4. Mrs. Peabody was hired by the respondent as an assistant manager in February 1969. She reports to the manager; is hourly rated and, along with all the other employees, punches a time clock. In the absence of the manager she supervises two full time kitchen employees and two part time employees and as well "keeps an eye on" the waitresses. She does not hire personnel but can and has recommended persons for hiring. She believes she has the authority to dismiss employees as she was told by the manager that when he is away she was in complete charge of the operations. She does not recommend wage increases nor grant time off except in emergencies. If there were complaints about kitchen work she could reprimand the employee concerned. She is responsible for the cooking of food and related work and spends all of her time in the kitchen but can observe all parts of the restaurant from that point. She has recommended dismissal of employees to the manager.

5. Having regard to the foregoing brief statement of the evidence we are satisfied that Mrs. Peabody does exercise sufficient independent control and authority with the other employees and does therefore exercise managerial functions within the meaning of section 1(3)(b) of the Labour Relations Act. We find that the assistant manager is not included in the bargaining unit.

6. The Board further finds that all employees of the respondent at St. Catharines save and except assistant manager, persons above the rank of assistant manager, and persons regularly employed for not more than 24 hours per week, constitute a unit of employees of the respondent appropriate for collective bargaining.

7. The Board further finds that all employees of the respondent at St. Catharines employed for not more than 24 hours per week save and except assistant manager and persons above the rank of assistant manager constitute a unit of employees of the respondent appropriate for collective bargaining.

8. The Board is satisfied on the basis of all the evidence before it that more than fifty-five per cent of the employees of the respondent in the bargaining unit described in paragraph 6 above, at the time the application was made, were members of the applicant on April 15, 1969 the terminal date fixed for this application and the date which the Board determines, under section 77(2)(j) of the Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

9. A certificate will issue to the applicant with respect to the bargaining unit determined by the Board to be appropriate in paragraph 6 above.

10. THE BOARD IS SATISFIED ON THE BASIS OF THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 7 ABOVE, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON APRIL 15, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

11. THE APPLICATION IS DISMISSED WITH RESPECT TO THOSE EMPLOYEES INCLUDED WITHIN THE DESCRIPTION OF THE BARGAINING UNIT IN PARAGRAPH 7.

DISSENT OF BOARD MEMBER P. J. O'KEEFFE: JUNE 18, 1969.

I DISSENT. I WOULD HAVE, ON ALL THE EVIDENCE, INCLUDED THE ASSISTANT MANAGER IN THE BARGAINING UNIT AS IN MY OPINION, SHE DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF THE ACT.

16041-69-R: THE CARETAKERS AND MAINTENANCE ASSOCIATION FOR THE COUNTY OF PETERBOROUGH (APPLICANT) v. THE PETERBOROUGH COUNTY BOARD OF EDUCATION (RESPONDENT) v. CANADIAN UNION OF PUBLIC EMPLOYEES (INTERVENER).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: E. L. BUTCHER, C. H. GARROD, FOR THE APPLICANT; S. H. MURPHY, E. PARK FOR THE RESPONDENT; D. R. LINDSAY, W. A. ACTON, WILLIAM MACLAGGAN, BRUCE HEARD FOR THE INTERVENER.

DECISION OF THE BOARD: JUNE 19, 1969.

1. IN 1952 THE PETERBOROUGH BOARD OF EDUCATION CARETAKERS ASSOCIATION (HEREINAFTER REFERRED TO AS THE "ASSOCIATION") FORMED FOR THE PURPOSES OF IMPROVING WORKING CONDITIONS FOR AND ON BEHALF OF ITS MEMBERS WHO WERE EMPLOYED BY THE CITY OF PETERBOROUGH. SUBSEQUENTLY THE ASSOCIATION NEGOTIATED A NUMBER OF COLLECTIVE AGREEMENTS WITH THE CITY OF PETERBOROUGH BOARD OF EDUCATION.

2. ON JANUARY 1, 1969 PURSUANT TO THE SECONDARY SCHOOLS AND BOARD OF EDUCATION ACT 1968 THE RESPONDENT WAS FORMED. THE RESPONDENT IS THE SUCCESSOR TO A NUMBER OF SCHOOL BOARDS WHICH FORMERLY EXISTED IN THE COUNTY OF PETERBOROUGH AND INCLUDED AMONG THOSE SCHOOL BOARDS IS THE SCHOOL BOARD FOR THE CITY OF PETERBOROUGH.

3. ON FEBRUARY 5, 1969 THE ASSOCIATION FORMALLY RESOLVED "THAT IT WOULD NOT BE IN OUR BEST INTEREST TO BARGAIN FOR THE COUNTY EMPLOYEES AT THIS TIME" AND "THAT A LETTER BE SENT TO ALL COUNTY CARETAKERS WHO REQUESTED ADMISSION TO OUR ASSOCIATION THAT IT WAS NOT IN THE BEST INTEREST OF ALL CONCERNED TO ACCEPT NEW MEMBERS AT THIS TIME." IT SHOULD BE NOTED THAT COUNTY CARETAKERS ARE EMPLOYEES OF THE RESPONDENT WHO ARE NOT EMPLOYED BY THE CITY OF PETERBOROUGH BOARD OF EDUCATION.

4. WHILE THERE WAS SOME EVIDENCE THAT THE MEMBERS OF THE ASSOCIATION HAD AGREED TO TAKE COUNTY MEMBERS INTO MEMBERSHIP THE ASSOCIATION HAD NOT AT THE DATE OF THE HEARING TAKEN ANY FORMAL STEPS TO REMOVE THE EARLIER RESTRICTIONS OF FEBRUARY 5, 1969 NOR HAD THE ASSOCIATION TAKEN ANY PROCEDURE IN ACCORDANCE WITH ITS CONSTITUTION TO ADMIT THE COUNTY EMPLOYEES INTO MEMBERSHIP.

5. THE APPLICANT SEEKS TO INCLUDE COUNTY EMPLOYEES IN THE BARGAINING UNIT. ASSUMING THEREFORE THAT THE ASSOCIATION WAS THE PROPER APPLICANT IT WAS NOT ABLE TO ACCEPT INTO MEMBERSHIP THE COUNTY EMPLOYEES WHO WOULD PROPERLY BE MEMBERS OF THE BARGAINING UNIT AND ACCORDINGLY ON THAT GROUND ALONE THE APPLICATION SHOULD BE DISMISSED. SEE INTERNATIONAL UNION OF OPERATING ENGINEERS V. CANADIAN CANNERS LIMITED PLANT No. 1, 1965 MAY MTHLY. REP. 126.

6. IN ADDITION MR. E. L. BUTCHER, TESTIFYING FOR THE APPLICANT, ADMITTED THAT THERE WAS NO SUCH ENTITY AS THE APPLICANT HEREIN AND THAT HE CREATED THE NAME USED BY THE APPLICANT WITH THE HOPE THAT THE NAME WOULD BE ADOPTED BY THE ASSOCIATION.

7. HAVING REGARD TO ALL THE FACTORS HEREIN, THE APPLICATION IS DISMISSED.

16052-69-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. THE BORDEN COMPANY, LIMITED (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
P. J. O'KEEFFE AND J. E. C. ROBINSON.

DECISION OF THE BOARD: JUNE 26, 1969.

• • •

4. THE APPLICANT HAS APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR ALL OFFICE, CLERICAL AND SALES EMPLOYEES OF THE RESPONDENT, WITH CERTAIN EXCEPTIONS AND THE RESPONDENT SUBMITTED THAT THE SALES STAFF SHOULD BE EXCLUDED FROM THE BARGAINING UNIT. WE HAVE CONSIDERED THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AND THE REPRESENTATIONS OF THE PARTIES, AND HAVING REGARD TO THE NATURE OF THE WORK PERFORMED BY THE SALESMEN; THE FACT THAT THEY SPEND PRACTICALLY ALL OF THEIR TIME OUT OF THE OFFICE; THEIR WORKING CONDITIONS WHICH ARE COMPLETELY DIFFERENT FROM THE OTHER OFFICE STAFF AS TO HOURS OF WORK, METHOD OF REMUNERATION WHICH INCLUDES A SALARY, COMMISSION, INCENTIVE BONUS, EXPENSE ACCOUNT AND CAR ALLOWANCE; THE DIFFERENCE IN SKILLS BETWEEN THE TWO GROUPS; THE FACT THERE IS NO INTERMINGLING OF PERSONNEL BETWEEN THE GROUPS; THAT THERE IS A DIFFERENT LINE OF SUPERVISION, AND THE DESIRES OF THE EMPLOYEES, WE ARE SATISFIED THAT THERE IS NO COMMUNITY OF INTEREST BETWEEN THE SALES STAFF AND THE OFFICE AND CLERICAL STAFF. WE THEREFORE FIND THAT THOSE EMPLOYEES CLASSIFIED BY THE RESPONDENT AS SALESMEN ARE NOT APPROPRIATE FOR INCLUSION IN A BARGAINING UNIT OF OFFICE AND CLERICAL PERSONNEL.

5. THE BOARD FURTHER FINDS THAT ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT ASSISTANT MANAGERS, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, AND PERSONS COVERED UNDER A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT DATED JANUARY 1ST, 1968, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

6. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE SECRETARY-INVOICE CLERK IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND IS EXCLUDED FROM THE BARGAINING UNIT DESCRIBED ABOVE.

7. FOR THE PURPOSES OF CLARITY THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE ASSISTANT OFFICE MANAGER AND THE NIGHT SUPERVISOR ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT DESCRIBED ABOVE.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 6, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON FEBRUARY 5TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

16112-69-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) v. OLIVETTI UNDERWOOD LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: DANIEL DEAN, W. FRASER AND DAVID LOWTHER FOR THE APPLICANT, A. A. WHITE AND D. C. MUCCI FOR THE RESPONDENT, HARRY ROY CLARKE AND RODGER DOUGLAS CLARK FOR THE OBJECTORS.

DECISION OF THE BOARD: JUNE 24, 1969.

• • •

3. THE BOARD FURTHER FINDS THAT ALL CUSTOMER ENGINEERING SERVICES DIVISION EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT CES MANAGERS, PERSONS ABOVE THE RANK OF CES MANAGER, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE EMPLOYEES IN THE BARGAINING UNIT DESCRIBED ABOVE WORK OUT OF THREE LOCATIONS IN METROPOLITAN TORONTO. THESE LOCATIONS ARE KNOWN AS TORONTO EAST SALES AND SERVICE AT 26 OVERLEA BOULEVARD, TORONTO CENTRAL SALES AND SERVICE AT 8 SPADINA ROAD AND TORONTO WEST SALES AND SERVICE AT 1040 MARTIN-GROVE ROAD.

5. A DOCUMENT SIGNED BY 17 EMPLOYEES AT THE TORONTO EAST BRANCH WAS FILED IN OPPOSITION TO THIS APPLICATION. IN ADDITION, 10 EMPLOYEES FROM THE TORONTO WEST BRANCH FILED INDIVIDUAL LETTERS WHEREIN THEY PURPORT TO WITHDRAW THEIR SUPPORT FROM THE UNION.

6. NO ONE APPEARED AT THE HEARINGS IN THIS MATTER TO TESTIFY IN SUPPORT OF THE DOCUMENT WHICH CONTAINED THE 17 SIGNATURES.

7. TWO EMPLOYEES FROM THE TORONTO WEST BRANCH TESTIFIED CONCERNING THE ORIGINATION OF SOME OF THE INDIVIDUAL LETTERS THAT WERE FILED. WHILE THE EVIDENCE WITH RESPECT TO THE MANNER IN WHICH CERTAIN OF THE INDIVIDUAL LETTERS ORIGINATED AND CAME TO BE SIGNED MIGHT BE INSUFFICIENT TO SATISFY THE ONUS OF PROOF WHICH RESTS UPON THE OBJECTORS, THE EVIDENCE WITH RESPECT TO AT LEAST FOUR OF THE INDIVIDUAL LETTERS SATISFIES US THAT THE FOUR LETTERS ARE A FREE EXPRESSION OF THE EMPLOYEES TRUE WISHES. SINCE THE SIGNATORIES OF THE FOUR LETTERS WERE CLAIMED BY THE APPLICANT AS MEMBERS, THE LETTERS ACCORDINGLY CAST DOUBT ON THE MEMBERSHIP EVIDENCE SUBMITTED BY THE APPLICANT WITH RESPECT TO THE FOUR EMPLOYEES.

8. THE APPLICANT, HOWEVER, CALLED EVIDENCE IN SUPPORT OF ITS CHARGE THAT "THERE WAS INTERFERENCE BY THE RESPONDENT OLIVETTI UNDERWOOD IN THEIR EMPLOYEES RIGHT TO JOIN A TRADE UNION OF THEIR CHOICE ... MANAGEMENT ASSISTED EMPLOYEE TO START PETITION AGAINST APPLICANT UNION". ALL THE APPLICANT'S EVIDENCE IN SUPPORT OF ITS CHARGES RELATED TO THE CIRCUMSTANCES SURROUNDING THE ORIGINATION AND SIGNING OF THE DOCUMENT WHICH CONTAINED THE 17 SIGNATURES. EVEN IF WITNESSES HAD APPEARED TO SUPPORT THIS DOCUMENT, THE APPLICANT'S EVIDENCE WAS SUCH THAT THE BOARD WOULD HAVE FOUND THAT THE DOCUMENT CONTAINING THE 17 SIGNATURES WAS CIRCULATED IN A MANNER WHICH WOULD PRECLUDE THE BOARD FROM FINDING THAT THE DOCUMENT WAS A FREE EXPRESSION OF THE TRUE WISHES OF THE 17 EMPLOYEES. ACCORDINGLY, THE BOARD WOULD NOT HAVE FOUND THAT THE 17 SIGNATURES CAST DOUBT ON THE MEMBERSHIP EVIDENCE FILED ON BEHALF OF ANY OF THE EMPLOYEES WHO WORK IN THE TORONTO EAST BRANCH.

9. THE APPLICANT FRANKLY ACKNOWLEDGED THAT THE EVIDENCE IN SUPPORT OF ITS CHARGES DID NOT RELATE TO ANY OF THE INDIVIDUAL LETTERS WHICH WERE SENT BY EMPLOYEES AT THE TORONTO WEST BRANCH. OUR ASSESSMENT OF THE EVIDENCE IS THAT THERE WAS NOTHING WHICH WOULD TIE THE UNFAIR ACTIVITIES OF THE RESPONDENT'S OFFICIALS AT THE TORONTO EAST BRANCH TO THE EMPLOYEES AT THE TORONTO WEST BRANCH. WHILE THE APPLICANT ARGUED THAT THE UNFAIR ACTIVITIES AT THE TORONTO EAST BRANCH WAS EVIDENCE OF A WIDESPREAD PLAN ON THE PART OF THE RESPONDENT, THE EVIDENCE, IN OUR VIEW, DOES NOT SUPPORT THIS ARGUMENT. INDEED, IT IS TO BE NOTED THAT NONE OF THE EMPLOYEES AT THE TORONTO CENTRAL BRANCH, WHICH IS THE LARGEST OF THE THREE BRANCHES, EXPRESSED OPPOSITION TO THIS APPLICATION.

10. ON ALL THE EVIDENCE, WE MUST THEREFORE FIND THAT THERE IS NOTHING BEFORE US WHICH WOULD CAUSE THE BOARD NOT TO GIVE EFFECT TO THE FOUR INDIVIDUAL LETTERS WHICH WERE FILED IN OPPOSITION TO THIS APPLICATION BY EMPLOYEES AT THE TORONTO WEST BRANCH.

11. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 7TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

12. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

13. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

14. THE MATTER IS REFERRED TO THE REGISTRAR.

16136-69-R: NURSES' ASSOCIATION HOTEL DIEU HOSPITAL, ST. CATHARINES (APPLICANT) v. HOTEL DIEU HOSPITAL, ST. CATHARINES (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: D.F.O. HERSEY, KATHERINE MOORE AND ELIZABETH A. EAGLE FOR THE APPLICANT, ALEX D. LUNDY AND MRS. M. HEMPHILL FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 24, 1969.

1. THIS IS AN APPLICATION FOR CERTIFICATION. AT THE HEARING IN THIS MATTER, THE APPLICANT CALLED EVIDENCE TO ESTABLISH THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF THE LABOUR RELATIONS ACT. THE MINUTES OF THE FIRST MEETING WHICH WAS CALLED BY THE RESPONDENT'S EMPLOYEES EVIDENCED THE FACT THAT THE APPLICANT WAS CREATED BY THE ADOPTION OF THE CONSTITUTION BY THE THIRTY EMPLOYEES WHO WERE IN ATTENDANCE AT THAT MEETING. IMMEDIATELY FOLLOWING THE ADOPTION OF THE CONSTITUTION, ALL THIRTY EMPLOYEES WERE ENROLLED AS MEMBERS IN THE APPLICANT. THE MINUTES, HOWEVER, DO NOT DISCLOSE THAT THE MEMBERS SUBSEQUENTLY RATIFIED OR CONFIRMED THE CONSTITUTION AFTER BECOMING MEMBERS OF THE APPLICANT. WE ARE OF OPINION THAT WHERE A CONSTITUTION IS ADOPTED AT A MEETING AND THE PERSONS WHO ADOPTED THE CONSTITUTION BECAME THE MEMBERS OF THE ORGANIZATION AT THE SAME MEETING AT WHICH THE CONSTITUTION IS ADOPTED, THE BOARD WOULD BE TAKING A VERY TECHNICAL POSITION IF IT DISTINGUISHED IN POINT OF TIME BETWEEN THE SIGNING OF MEMBERS AND THE ADOPTION OF THE CONSTITUTION. IF THE SIGNING OF MEMBERS AND THE ADOPTION OF THE CONSTITUTION TAKE PLACE AT THE SAME MEETING THEY SHOULD BE DEEMED TO HAVE TAKEN PLACE SIMULTANEOUSLY. IT THEREFORE IS OF LITTLE CONSEQUENCE WHETHER THE PERSONS IN ATTENDANCE AT THE MEETING ARE ENROLLED AS MEMBERS PRIOR TO THE ADOPTION OF THE CONSTITUTION OR WHETHER THE CONSTITUTION IS ADOPTED PRIOR TO THE ENROLMENT OF THE MEMBERS SO LONG AS THESE EVENTS TAKE PLACE AT THE SAME MEETING. IF EVERYTHING IS DONE AT THE ONE MEETING NO SUBSEQUENT CONFIRMATION OR RATIFICATION IS NECESSARY. HOWEVER, THIS SITUATION IS TO BE DISTINGUISHED FROM THE SITUATION WHERE PERSONS BECOME MEMBERS IN A NAMED ORGANIZATION AND SOME DAYS OR WEEKS ELAPSE BEFORE THE ORGANIZATION COMES INTO EXISTENCE BY THE ADOPTION OF THE CONSTITUTION. IN SUCH INSTANCE AT THE TIME THE MEMBERSHIP WAS SIGNED THERE WAS NO ORGANIZATION TO JOIN. SIMILARLY, IF A CONSTITUTION IS ADOPTED AT A MEETING AND SOME DAYS OR WEEKS ELAPSE BEFORE ANYONE BECOMES A MEMBER OF THE CONSTITUTED ORGANIZATION, SUBSEQUENT RATIFICATION BY THE MEMBERSHIP WOULD BE REQUIRED.

HOWEVER, WHERE, AS IN THIS CASE, THE ORGANIZATION IS CONSTITUTED AND MEMBERS ARE ENROLLED AT THE SAME MEETING, NO SUBSEQUENT RATIFICATION OR CONFIRMATION OF THE CONSTITUTION OF THE ORGANIZATION IS REQUIRED AND THERE CAN BE NO QUESTION AS TO THE VALIDITY OF THE MEMBERSHIP EVIDENCE.

2. THE BOARD THEREFORE FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

3. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL LAY REGISTERED AND GRADUATE NURSES EMPLOYED AS SUCH BY THE RESPONDENT, SAVE AND EXCEPT HEAD NURSES AND PERSONS ABOVE THE RANK OF HEAD NURSE, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT A. BLACK, A PERSON CLASSIFIED BY THE RESPONDENT AS A HOSPITAL HEALTH UNIT NURSE, IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND IS NOT INCLUDED IN THE BARGAINING UNIT, AND THAT B. OPATOVSKY, A PERSON CLASSIFIED BY THE RESPONDENT AS MEDICAL RECORDS CLERK, IS NOT AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 14TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

16138-69-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL #151 (APPLICANT) V. THE COCHRANE-IROQUOIS FALLS BOARD OF EDUCATION (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: M. ROGOZYNSKI AND P. POWERS FOR THE APPLICANT, R. P. ARMSTRONG FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 10, 1969.

• • •

4. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT IN ITS ADMINISTRATIVE OFFICE AT IROQUOIS FALLS. THE UNIT PROPOSED BY THE RESPONDENT, ON THE OTHER HAND, WOULD ENCOMPASS ALL OF ITS OFFICE AND CLERICAL EMPLOYEES. MORE SPECIFICALLY, THE RESPONDENT'S UNIT WOULD INCLUDE NOT ONLY THE OFFICE AND CLERICAL EMPLOYEES AT IROQUOIS FALLS BUT ALSO THOSE IN ITS ADMINISTRATIVE OFFICE AT COCHRANE AND OFFICE EMPLOYEES IN CALVERT TOWNSHIP AND BLACK RIVER TOWNSHIP.

5. FOR THE REASONS GIVEN IN THE BOARD'S DECISION DATED MAY 8TH, 1969, IN THE WATERLOO COUNTY BOARD OF EDUCATION CASE (BOARD FILE NO. 15561-68-M, AS FAR AS WE ARE ABLE TO SEE AT THIS TIME, THE EMPLOYEES OF THE RESPONDENT ARE NOT DISTINGUISHABLE ON A GEOGRAPHIC BASIS. ACCORDINGLY, THE BOARD FINDS THAT ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 16TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. THIS APPLICATION ACCORDINGLY IS DISMISSED.

16143-69-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. GRAND RIVER CABLE T.V. LIMITED (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: G. VANDEZANDE, C. JOHN VANDERLAAN FOR THE APPLICANT; PETER H. MANDELL FOR THE RESPONDENT.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND R. W. TEAGLE:
JUNE 4, 1969.

1. THE APPLICANT HAS APPLIED FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF THE RESPONDENT'S EMPLOYEES IN STRATFORD ENGAGED AS TECHNICIANS AND INSTALLERS.

2. THE RESPONDENT SUBMITTED THAT THE BOARD DOES NOT HAVE JURISDICTION TO DEAL WITH THIS APPLICATION AS THE NATURE OF ITS BUSINESS, CABLE T.V., BRINGS MATTERS RELATING TO LABOUR RELATIONS WITHIN THE

JURISDICTION OF THE PARLIAMENT OF CANADA. THE RESPONDENT RELIES ON THE PROVISIONS OF THE BRITISH NORTH AMERICA ACT 1867 30 - 31 VICTORIA CHAPTER 3, PARTICULARLY SECTION 92(10)(c) THEREOF, AND THE BROADCASTING ACT, STATUTE OF CANADA 16 - 17 ELIZ. II CHAPTER 25, UNDER WHICH THE RESPONDENT IS LICENSED. THE BOARD HEARD THE PARTIES' REPRESENTATIONS AS TO ITS JURISDICTION IN THIS MATTER AND RESERVED ITS DECISION WITHOUT DEALING IN ANY WAY WITH THE OTHER RELEVANT MATTERS TO THIS APPLICATION.

3. SECTION 92(10) OF THE BRITISH NORTH AMERICA ACT IS AS FOLLOWS:

"92. IN EACH PROVINCE THE LEGISLATURE MAY EXCLUSIVELY MAKE LAWS IN RELATION TO MATTERS COMING WITHIN THE CLASSES OF SUBJECTS NEXT HEREINAFTER ENUMERATED; THAT IS TO SAY,--

10. LOCAL WORKS AND UNDERTAKINGS OTHER THAN SUCH AS ARE OF THE FOLLOWING CLASSES:--

- (a) LINES OF STEAM AND OTHER SHIPS, RAILWAYS, CANALS, TELEGRAPHS, AND OTHER WORKS AND UNDERTAKINGS CONNECTING THE PROVINCE WITH ANY OTHER OR OTHERS OF THE PROVINCES, OR EXTENDING BEYOND THE LIMITS OF THE PROVINCE;
- (b) LINES OF STEAM SHIPS BETWEEN THE PROVINCE AND ANY BRITISH OR FOREIGN COUNTRY;
- (c) SUCH WORKS AS, ALTHOUGH WHOLLY SITUATE WITHIN THE PROVINCE, ARE BEFORE OR AFTER THEIR EXECUTION DECLARED BY THE PARLIAMENT OF CANADA TO BE FOR THE GENERAL ADVANTAGE OF CANADA OR FOR THE ADVANTAGE OF TWO OR MORE OF THE PROVINCES."

4. THE RELEVANT SECTIONS OF THE BROADCASTING ACT ARE AS FOLLOWS:

"2.(a) BROADCASTING UNDERTAKINGS IN CANADA MAKE USE OF RADIO FREQUENCIES THAT ARE PUBLIC PROPERTY AND SUCH UNDERTAKINGS CONSTITUTE A SINGLE SYSTEM, HEREIN REFERRED TO AS THE CANADIAN BROADCASTING SYSTEM, COMPRISING PUBLIC AND PRIVATE ELEMENTS."

"3.(d) "BROADCASTING UNDERTAKING" INCLUDES A BROADCASTING TRANSMITTING UNDERTAKING, A BROADCASTING RECEIVING UNDERTAKING AND A NETWORK OPERATION, LOCATED IN WHOLE OR IN PART WITHIN CANADA OR ON A SHIP OR AIRCRAFT REGISTERED IN CANADA."

THE RESPONDENT OBTAINS ITS RIGHT TO OPERATE THROUGH ITS LICENSE ISSUED UNDER THE BOARDCASTING ACT, TO CARRY ON A BROADCASTING UNDERTAKING AS A BROADCASTING RECEIVING UNDERTAKING AS DEFINED IN SECTION 3(d) ABOVE. UNDER SECTION 2(a) OF THE BROADCASTING ACT, SUCH BROADCASTING UNDERTAKINGS ARE DECLARED TO CONSTITUTE A SINGLE CANADIAN BROADCASTING SYSTEM. IN OUR OPINION, WHILE THE WORK WITH WHICH WE ARE HERE CONCERNED DOES NOT FALL WITHIN ANY OF THE ENUMERATED CLASSES OF SECTION 91 OF THE BRITISH NORTH AMERICA ACT WHICH ARE RESERVED BY THE PARLIAMENT OF CANADA, BROADCASTING DOES FALL WITHIN THE EXCEPTIONS SET OUT IN SECTION 92(10)(c) OF THAT ACT AS BEING A WORK FOR THE GENERAL ADVANTAGE OF CANADA.

5. HAVING REGARD TO THE ABOVE, IT IS THE BOARD'S OPINION THAT IT DOES NOT HAVE JURISDICTION TO ENTERTAIN THIS APPLICATION.

6. THESE PROCEEDINGS ARE ACCORDINGLY TERMINATED.

DISSENT OF BOARD MEMBER E. BOYER: JUNE 4, 1969.

I DISSENT. SINCE THE UNDERTAKING OF THE RESPONDENT LIES SOLELY WITHIN A RESTRICTED AREA IN THE PROVINCE OF ONTARIO AND THE EMPLOYEES CONCERNED IN THIS APPLICATION ARE INVOLVED IN THE INSTALLATION OF CABLE IN THAT AREA, I FIND THAT THE BROADCASTING ACT DOES NOT APPLY IN THIS SITUATION TO REMOVE JURISDICTION FROM THE PROVINCE OF ONTARIO TO LEGISLATE WITH RESPECT TO LABOUR RELATIONS.

16152-69-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO, CLC (APPLICANT) v. PURE SPRING (CANADA) LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG, B. CHERCOVER, D. A. WAGNER AND E. WAGNER FOR THE APPLICANT, R. D. PERKINS FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 26, 1969.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE APPLICANT REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN.

2. THE APPLICANT HAD MADE AN EARLIER APPLICATION SHORTLY PRIOR TO THE INSTANT APPLICATION. THAT APPLICATION WAS DISMISSED WHEN THE APPLICANT SOUGHT LEAVE TO WITHDRAW THE APPLICATION ON DISCOVERING THAT LESS THAN 45 PER CENT OF THE RESPONDENT'S EMPLOYEES HAD SIGNED AS MEMBERS.

3. BEFORE THE BOARD HAD AN OPPORTUNITY TO RETURN THE APPLICANT'S MEMBERSHIP EVIDENCE WHICH HAD BEEN FILED IN THE FIRST CASE, THE APPLICANT RE-SIGNED THE EMPLOYEES WHO HAD SUPPORTED THE FIRST APPLICATION AND ALSO SIGNED ADDITIONAL MEMBERS. THE EMPLOYEES WHO AGAIN SIGNED APPLICATION FOR MEMBERSHIP CARDS CONTRIBUTED ANOTHER PAYMENT ON ACCOUNT OF INITIATION FEE AT THE TIME THAT THEY SIGNED THE SECOND CARD. FORM 8, THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, THAT WAS FILED IN SUPPORT OF THE DOCUMENTARY EVIDENCE OF MEMBERSHIP MADE NO REFERENCE TO THE EARLIER CARDS THAT HAD BEEN SIGNED.

4. THE RESPONDENT OBJECTED TO THE NEW MEMBERSHIP EVIDENCE WHICH HAD BEEN SUBMITTED ON BEHALF OF EMPLOYEES WHO HAD SIGNED APPLICATIONS FOR MEMBERSHIP IN THE FIRST APPLICATION. THE RESPONDENT ARGUES THAT WHEN EMPLOYEES SIGNED AN APPLICATION FOR MEMBERSHIP AND PAID AN INITIATION FEE, IF THEY SUBSEQUENTLY SIGNED ANOTHER CARD AND PAID ANOTHER DOLLAR, THE SECOND CARD SHOULD NOT BE CONSIDERED TO BE AN "APPLICATION" FOR MEMBERSHIP SINCE THEY HAD ALREADY APPLIED. THE SECOND DOLLAR PAYMENT SHOULD LIKEWISE NOT BE CONSIDERED TO BE AN "INITIATION" FEE SINCE THAT FEE HAD INITIALLY BEEN PAID AT THE TIME THE FIRST CARD WAS SIGNED.

5. THE APPLICANT ARGUED THAT THERE WAS NO NEED TO MAKE DISCLOSURE IN FORM 8 CONCERNING THE FIRST CARDS AND THERE WAS NO ATTEMPT TO MISLEAD THE BOARD IN ANY WAY.

6. THE FACTS STATED IN FORM 8 ARE CORRECT AND THEY TRULY DESCRIBED THE EVENTS SURROUNDING THE SIGNING OF THE SECOND CARDS.

7. HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE APPLICANT'S MEMBERSHIP EVIDENCE, WE FIND NO MERIT IN THE RESPONDENT'S OBJECTIONS. THE BOARD DOES NOT CONSIDER THE DOCUMENTARY EVIDENCE OF MEMBERSHIP SUBMITTED BY AN APPLICANT UNION FOR THE PURPOSE OF DETERMINING WHETHER SUCH EVIDENCE MEETS THE UNION'S CONSTITUTIONAL REQUIREMENTS OR MEETS ANY OTHER EXTRANIOUS TESTS. THE PRIMARY PURPOSE OF ASSESSING THE DOCUMENTARY EVIDENCE OF MEMBERSHIP SUBMITTED BY AN APPLICANT IS TO ENABLE THE BOARD TO DETERMINE WHETHER THE EMPLOYEES WHO SIGNED SUCH DOCUMENTARY EVIDENCE DESIRE TO HAVE THE APPLICANT UNION REPRESENT THEM FOR COLLECTIVE BARGAINING PURPOSES AND WHETHER THE UNION IS PREPARED TO REPRESENT ALL EMPLOYEES IN AN APPROPRIATE BARGAINING UNIT. THERE IS NOTHING BEFORE THE BOARD IN THIS CASE WHICH WOULD CAST DOUBT ON THE EMPLOYEES' OR UNION'S INTENTIONS AS EXPRESSED IN THE DOCUMENTARY EVIDENCE OF MEMBERSHIP FILED.

8. IT APPEARS TO THE BOARD ON AN EXAMINATION OF THE RECORDS OF THE APPLICANT AND THE RECORDS OF THE RESPONDENT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY HEREINAFTER DESCRIBED WERE MEMBERS OF THE APPLICANT AT THE TIME THE APPLICATION WAS MADE.

9. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD DIRECTS THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE FOLLOWING VOTING CONSTITUENCY:

ALL OFFICE EMPLOYEES AND LABORATORY TECHNICIANS OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT OFFICE MANAGER, PERSONS ABOVE THE RANK OF OFFICE MANAGER, SALES SUPERVISORS, SALES REPRESENTATIVES, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.

10. ALL EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY ON THE 20TH DAY OF MAY, 1969 WHO HAVE NOT VOLUNTARILY TERMINATED THEIR EMPLOYMENT OR WHO HAVE NOT BEEN DISCHARGED FOR CAUSE BETWEEN THE 20TH DAY OF MAY, 1969 AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

11. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

12. THE MATTER IS REFERRED TO THE REGISTRAR.

16153-69-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) v. ALMA PAINT AND VARNISH CO. LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: JOHN F. KANE AND F. KAHANEK FOR THE APPLICANT; D. CHURCHILL-SMITH, E. L. GLASS AND HOWARD MUNROE FOR THE RESPONDENT; H. S. TAGGART, Q.C. FOR THE OBJECTORS.

DECISION OF THE BOARD: JUNE 27, 1969.

• • •

3. THE APPLICANT SEEKS A BARGAINING UNIT COMPRISING ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT AMONG OTHER EXCLUSIONS NOT IMMEDIATELY RELEVANT, RESEARCH LABORATORY PERSONNEL.

THE RESPONDENT, ON THE OTHER HAND, CONTENDS THAT THE EXCLUSION SHOULD EMBODY ALL LABORATORY PERSONNEL, THAT IS, PERSONS EMPLOYED IN BOTH THE RESEARCH AND THE QUALITY CONTROL LABORATORIES ON THE GROUNDS OF LACK OF COMMUNITY OF INTEREST.

4. THIS VERY QUESTION WAS RAISED IN THE INTERNATIONAL CHEMICAL WORKERS' UNION AND ALMA PAINT & VARNISH COMPANY LIMITED CASE, REPORTED IN O.L. R.B. MONTHLY REPORT SEPTEMBER 1968, p. 55. IN THAT INSTANCE, AN EXAMINER WAS APPOINTED. THE BOARD DECIDED, FOLLOWING THE EXAMINER'S REPORT IN THAT CASE, THAT THE QUALITY CONTROL LABORATORY EMPLOYEES SHARE A COMMUNITY OF INTEREST WITH THE RESEARCH LABORATORY EMPLOYEES RATHER THAN WITH THE PRODUCTION EMPLOYEES, AND THAT ALL LABORATORY EMPLOYEES SHOULD BE EXCLUDED FROM THE PRODUCTION UNIT.

5. AT THE HEARING THE APPLICANT STATED, AS WE UNDERSTAND IT, THAT THE SITUATION IS NOW THE SAME AS IT WAS WHEN THE PRIOR APPLICATION WAS DEALT WITH BY THE BOARD AND INDICATED THAT AN EXAMINER BE APPOINTED. THE RESPONDENT OBJECTED TO ANY SUGGESTION THAT AN EXAMINER BE APPOINTED SINCE, IN ITS OPINION, THE QUESTION HAD ALREADY BEEN DECIDED IN THE PREVIOUS APPLICATION.

6. IN VIEW OF THE FACT THAT THE CIRCUMSTANCES APPEARED TO BE THE SAME NOW AS THEY WERE WHEN THE FOREGOING REPORTED DECISION WAS MADE, THE BOARD CAN SEE NEITHER REASONABLE CAUSE NOR USEFUL PURPOSE TO BE SERVED IN INSTITUTING A FURTHER EXAMINATION. HAVING REGARD, THEREFORE, TO THE BOARD'S FINDING IN THE PRIOR DECISION, THE BOARD HEREIN CONFIRMS THAT RESEARCH AND QUALITY CONTROL LABORATORY EMPLOYEES ARE NOT APPROPRIATE FOR INCLUSION IN THE BARGAINING UNIT SOUGHT BY THE APPLICANT.

7. THE BOARD, THEREFORE, FINDS, HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THAT ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, RETAIL STORE EMPLOYEES, CHEMISTS, LABORATORY EMPLOYEES AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

8. THERE WERE FILED WITH THE BOARD AFFIDAVITS SWORN BY TWO PERSONS PURPORTING TO BE EMPLOYEES OF THE RESPONDENT. THESE ARE DATED MAY 21ST, 1969 AND WERE RECEIVED BY THE BOARD ON MAY 23, 1969 SUBSEQUENT TO THE TERMINAL DATE OF MAY 20, 1969. BOTH AFFIDAVITS ALLEGE THAT THE DEPONENTS HAD BEEN THREATENED AND INSULTED BECAUSE OF THEIR OPPOSITION TO THE UNION AND EXPRESSING THE VIEW THAT OTHER EMPLOYEES HAD JOINED BECAUSE OF THEIR FEAR TO REFUSE TO SIGN CARDS. THE DEPONENTS WERE REPRESENTED BY COUNSEL AT THE HEARING OF THE MATTER, BUT WERE NOT PRESENT IN PERSON. THE BOARD

POINTED OUT THAT IT COULD NOT PROCEED UPON AFFIDAVIT EVIDENCE AND COUNSEL FOR THE DEPONENTS ASKED FOR AN ADJOURNMENT TO SEE IF HIS CLIENTS WOULD APPEAR TO TESTIFY. THE BOARD RESERVED ITS DECISION AS TO WHETHER AN ADJOURNMENT SHOULD BE ALLOWED IN THE CIRCUMSTANCES.

9. IT IS CLEAR FROM THE AFFIDAVITS THAT NEITHER OF THE DEPONENTS SIGNED MEMBERSHIP CARDS SO THAT NO QUESTION ARISES AS TO ANY EVIDENCE OF MEMBERSHIP FILED WITH RESPECT TO THEM. FURTHERMORE, THERE HAVE BEEN NO ALLEGATIONS OF IMPROPER CONDUCT MADE BY ANY OF THE EMPLOYEES WHO SIGNED MEMBERSHIP CARDS. IT IS A FACT THAT SOME SIX EMPLOYEES WHO HAD SIGNED UNION CARDS ALSO SIGNED DOCUMENTS REQUESTING THAT THE MATTER BE SETTLED BY THE HOLDING OF A VOTE. NONE OF THESE EMPLOYEES, HOWEVER, APPEARED AT THE HEARING IN SUPPORT OF THEIR SUBMISSIONS, AND NONE OF THE SUBMISSIONS CONTAIN ACCUSATIONS OF MISCONDUCT ON THE PART OF ANYONE. NO USEFUL PURPOSE WOULD BE SERVED, INSO-FAR AS THIS APPLICATION FOR CERTIFICATION IS CONCERNED, IN GRANTING THE ADJOURNMENT SOUGHT AND THE SAME IS, THEREFORE, DENIED.

10. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 20, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2) (J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

11. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

16164-69-R: CANADIAN BUSINESS MACHINE WORKERS UNION (APPLICANT) v. THE NATIONAL CASH REGISTER COMPANY OF CANADA, LIMITED (RESPONDENT)
CANADIAN OFFICE EMPLOYEES UNION No. 159, N.C.C.L. (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: W. C. IVES, G. McCUTCHEON, J. DRAPER AND J. HUNTER FOR THE APPLICANT, K. SCOTT, I. TARRANT AND W.H.M. WILSON FOR THE RESPONDENT, E. HUGHES AND L.J. LABONTE FOR THE INTERVENER, M. LEVINSON, A. HERITAGE AND T.W. WILDE FOR TORONTO TYPOGRAPHICAL UNION, LOCAL 91.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER O. HODGES: JUNE 6, 1969.

1. AT THE OUTSET OF THE HEARING, AFTER ENTERTAINING THE REPRESENTATIONS OF COUNSEL, THE MAJORITY OF THE BOARD CONSISTING OF THE ALTERNATE CHAIRMAN AND BOARD MEMBER H. F. IRWIN (BOARD MEMBER O. HODGES RESERVING HIS DECISION) RULED THAT THE TORONTO TYPOGRAPHICAL UNION, LOCAL 91, WHICH FILED AN INTERVENTION, HAD NO STATUS AS A PARTY TO THE INSTANT PROCEEDING. THE NAME OF THE TORONTO TYPOGRAPHICAL UNION, LOCAL 91 SHOWN AS INTERVENER #1 ACCORDINGLY IS DELETED FROM THE STYLE OF CAUSE OF THIS APPLICATION.

• • •

3. THE APPLICANT IS APPLYING FOR CERTIFICATION FOR A UNIT COMPOSED OF ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT TWO LOCATIONS IN METROPOLITAN TORONTO. ALL OF THESE EMPLOYEES ARE PAID ON A SALARIED BASIS. THE INTERVENER HOLDS THE BARGAINING RIGHTS FOR THE EMPLOYEES IN QUESTION BY VIRTUE OF A COLLECTIVE AGREEMENT EFFECTIVE FROM JANUARY 2ND, 1967 TO JULY 5TH, 1969 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE. THE INSTANT APPLICATION WAS FILED ON MAY 13TH, 1969, WHICH IS WITHIN THE LAST TWO MONTHS OF THE OPERATION OF THE AGREEMENT. ACCORDINGLY, PURSUANT TO SECTION 5(2) OF THE ACT, THE APPLICATION IS TIMELY.

4. THE APPLICANT HAD NOT PREVIOUSLY BEEN BEFORE THE BOARD. IT THEREFORE WAS CALLED UPON TO PROVE ITS STATUS AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

5. THE EVIDENCE IS THAT THE APPLICANT CAME INTO EXISTENCE IN 1944 AND THAT THE APPLICANT AND RESPONDENT HAVE BEEN PARTIES TO A SERIES OF COLLECTIVE AGREEMENTS SINCE THAT TIME. THE CURRENT COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER COVERS ALL OF THE EMPLOYEES OF THE RESPONDENT AT 222 LANSDOWNE AVENUE AND 15 MARMAC DRIVE, BOTH IN METROPOLITAN TORONTO. SPECIFICALLY EXCLUDED FROM THE COVERAGE OF THE COLLECTIVE AGREEMENT ARE MAIN OFFICE, SALARIED, SALES AND SERVICE EMPLOYEES, CAFETERIA STAFF, PLANT GUARDS, PART-TIME EMPLOYEES, FOREMEN, SUPERVISORS AND ALL EMPLOYEES WHO HAVE POWER TO DISCIPLINE EMPLOYEES ON BEHALF OF THE COMPANY.

6. THE CONSTITUTION OF THE APPLICANT WAS FILED AS AN EXHIBIT. SECTION 1 OF ARTICLE III, TITLED "MEMBERSHIP" READS:

ALL PIECE-WORK AND HOURLY RATED EMPLOYEES,
EXCEPTING THOSE WHO HAVE THE AUTHORITY TO
HIRE AND FIRE, SHALL BE ELIGIBLE FOR MEM-
BERSHIP.

SECTION 2 OF ARTICLE XIV, TITLED "AMENDMENTS" READS:

ANY AMENDMENT THAT DOES NOT CONCERN THE FUNDS OF THE ORGANIZATION AND WHICH HAS BEEN PROPOSED BY, OR TO, THE EXECUTIVE BOARD, SHALL BE SUBMITTED TO THE MEMBERS OF THE ORGANIZATION BY THE BOARD FOR ACTION BY THE MEMBERS. SUCH AMENDMENTS SHALL REQUIRE ONE MONTH'S NOTICE IN WRITING SETTING FORTH THE PROPOSED AMENDMENT TO THE EXECUTIVE BOARD WHO WILL PLACE IT BEFORE THE MEMBERS FOR THEIR DISCUSSION. SUCH PROPOSED AMENDMENTS SHALL BECOME EFFECTIVE AS PART OF THIS CONSTITUTION UPON APPROVAL, GIVEN BY BALLOT, OF A MAJORITY OF THE MEMBERS PRESENT AT A GENERAL MEETING.

7. GEORGE McCUTCHEON, THE PRESIDENT, AND JOHN DRAPER, THE VICE-PRESIDENT OF THE APPLICANT, TESTIFIED THAT A NOTICE OF MOTION, WHICH IS SET OUT BELOW, WAS APPROVED BY THE EXECUTIVE BOARD AT A MEETING HELD ON APRIL 7TH, 1967:

RE: CHANGE OF CONSTITUTION
PAGE 3 ARTICLE-3 SECTION-1

CHANGE FROM EXISTING FORM TO:

SECTION 1 - ALL PIECE-WORK, HOURLY RATED AND SALARIED EMPLOYEES, EXCEPTING THOSE WHO HAVE THE AUTHORITY TO HIRE AND FIRE, SHALL BE ELIGIBLE FOR MEMBERSHIP.

THE ABOVE NOTICE OF MOTION WAS TABLED BY McCUTCHEON AT A GENERAL MEETING OF THE MEMBERSHIP ON APRIL 14TH, 1969. THE AMENDMENT, HOWEVER, WAS NOT APPROVED BY BALLOT OR OTHERWISE BY THE MEMBERS PRESENT AT THE MEETING.

8. THE BOARD IS SATISFIED THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

9. IN THE METROPOLITAN LIFE INSURANCE COMPANY CASE, O.L.R.B. MONTHLY REPORT, AUGUST 1967, P. 437, THE BOARD REVIEWED ITS POLICY RELATING TO ITS OWN MEMBERSHIP REQUIREMENTS IN APPLICATIONS FOR CERTIFICATION AND THE EFFECT OF A TRADE UNION'S MEMBERSHIP REQUIREMENTS AS ESTABLISHED BY ITS CONSTITUTION. WITH REGARD TO THE LATTER CONSIDERATION, THE BOARD STATED IN PART AS FOLLOWS AT P. 441:

UNQUESTIONABLY IN CONSIDERING THE "ELIGIBILITY" PROBLEM, THE BOARD HAS TAKEN INTO CONSIDERATION THE CONSTITUTION OF THE PARTICULAR UNION IN QUESTION. IT IS ONE OF THE FACTORS WHICH THE BOARD LOOKS AT IN DETERMINING WHETHER A PERSON IS A MEMBER OF THE UNION.

10. IN THE INSTANT CASE, THE MEMBERSHIP PROVISION OF THE APPLICANT AS IT PRESENTLY APPEARS IN THE CONSTITUTION LIMITS MEMBERSHIP TO ALL PIECE-WORK AND HOURLY RATED EMPLOYEES. THE EVIDENCE OF McCUTCHEON AND DRAPER, THE TWO SENIOR RESPONSIBLE OFFICERS OF THE APPLICANT, CONCERNING THE STEPS WHICH ARE BEING TAKEN TO AMEND THE MEMBERSHIP PROVISION OF THE CONSTITUTION MAKES IT CLEAR THAT THE APPLICANT IN THE PAST HAS NOT SO INTERPRETED ITS CONSTITUTION AS TO PERMIT THE TAKING INTO MEMBERSHIP OF SALARIED EMPLOYEES. FURTHER, THE APPLICANT HAS NO PAST HISTORY OF TAKING SALARIED EMPLOYEES INTO MEMBERSHIP.

11. AS OF THE TERMINAL DATE OF THIS APPLICATION, INDEED EVEN AS LATE AS THE DATE OF THE BOARD HEARING, THE APPLICANT HAD NOT FULFILLED THE NECESSARY REQUIREMENTS OF SECTION 2 OF ARTICLE XIV TO AMEND SECTION 1 OF ARTICLE 3 SO AS TO INCLUDE SALARIED EMPLOYEES WITHIN THE SCOPE OF ITS MEMBERSHIP PROVISION. AT THE PRESENT TIME, THEREFORE, THE APPLICANT CANNOT TAKE INTO MEMBERSHIP THOSE EMPLOYEES WHO ARE THE SUBJECT OF THE INSTANT APPLICATION.

12. THE APPLICATION, ACCORDINGLY, MUST BE DISMISSED.

DECISION OF BOARD MEMBER H. F. IRWIN: JUNE 6, 1969.

I DISSENT FROM THE FINDING OF THE MAJORITY THAT THE APPLICANT CANNOT TAKE THE OFFICE AND CLERICAL EMPLOYEES FOR WHOM IT IS SEEKING CERTIFICATION INTO MEMBERSHIP.

THE MEMBERSHIP PROVISION OF THE CONSTITUTION OF THE APPLICANT ONLY MAKES REFERENCE TO PIECE-WORK AND HOURLY RATED EMPLOYEES. IN 1944, HOWEVER, WHEN THE CONSTITUTION OF THE APPLICANT WAS ORIGINALLY ADOPTED, COLLECTIVE AGREEMENTS AND CERTIFICATES OF THIS BOARD REGULARLY DESCRIBED BARGAINING UNITS IN TERMS OF HOURLY RATED EMPLOYEES. IN SO DESCRIBING UNITS, IT WAS CLEARLY UNDERSTOOD THAT THIS WAS THE DEMARCACTION LINE BETWEEN PLANT EMPLOYEES AND FOREMEN WHO WERE PAID ON A SALARIED BASIS. BY ANALOGY, THE SAME UNIT DESCRIPTION WAS INTENDED TO SEPARATE OFFICE EMPLOYEES FROM SUPERVISORY PERSONNEL.

IN THE LIGHT OF THIS BACKGROUND, THE MEMBERSHIP PROVISION OF THE APPLICANT'S CONSTITUTION CANNOT BE INTERPRETED AS A BAR TO THE APPLICANT TAKING OFFICE EMPLOYEES INTO MEMBERSHIP. THE OFFICE EMPLOYEES OF THE RESPONDENT FOR WHOM THE APPLICANT HAS SUBMITTED EVIDENCE OF MEMBERSHIP HAVE MET THE BOARD'S OWN MEMBERSHIP REQUIREMENTS AND HAVE CLEARLY INDICATED THEIR DESIRE TO BE REPRESENTED BY THE APPLICANT. THE APPLICANT, FOR ITS PART, BY SIGNING THEM INTO MEMBERSHIP HAS DEMONSTRATED ITS WILLINGNESS TO TAKE THEM INTO MEMBERSHIP. MOREOVER, THE APPLICANT HAS INSTITUTED THE NECESSARY PROCEDURES TO RECTIFY WHAT CONSTITUTES NO MORE THAN A TECHNICAL DEFECT IN ITS CONSTITUTION.

IN THESE CIRCUMSTANCES, I AM COMPLETELY SATISFIED THAT AS OF THE DATE OF THE MAKING OF THE INSTANT APPLICATION THE APPLICANT WAS ABLE TO TAKE SALARIED OFFICE AND CLERICAL EMPLOYEES INTO MEMBERSHIP. ACCORDINGLY, I WOULD HAVE DEALT WITH THE APPLICATION ON THIS BASIS.

16166-69-R: OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 452 (APPLICANT) v. THE CORPORATION OF THE CITY OF CORNWALL (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: M. BOULARD AND MISS M. WHITTEN FOR THE APPLICANT, B. M. WILSON FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 3, 1969.

• • •

3. HAVING REGARD TO THE WRITTEN AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT DEPARTMENT HEADS, DEPUTY DEPARTMENT HEADS, ASSISTANT DEPARTMENT HEADS, PURCHASING AGENT, PARKS SUPERINTENDENT, TAX AND WATER COLLECTOR, SUPERVISOR OF THE TREASURY OFFICE, CHIEF INSPECTOR, ASSISTANT TO THE CLERK-ADMINISTRATOR AND LICENSE ISSUER, PROFESSIONAL ENGINEERS, PUBLIC WORKS SUPERINTENDENT, FILTRATION PLANT SUPERINTENDENT, RECREATION DIRECTOR, ASSISTANT RECREATION DIRECTOR, TREASURY ACCOUNTANT, SECRETARIES TO THE MAYOR, CLERK-ADMINISTRATOR, CITY TREASURER AND INDUSTRIAL COMMISSIONER, THE PERSONNEL DEPARTMENT, TAX ARREARS COLLECTORS, SOCIAL SERVICES FIELD STAFF, PUBLIC WORKS FOREMEN, ENGINEERING ASSISTANTS, ENGINEERING ACCOUNTANT, PARKS FOREMAN, ALL SUMMER STUDENTS EMPLOYED IN THE RESPONDENT'S PARKS AND RECREATION SUMMER PROGRAMS, PARKING AUTHORITY EMPLOYEES, AND PERSONS COVERED BY A CERTIFICATE OF THE BOARD GRANTED TO THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 234, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. FOR PURPOSES OF CLARITY, THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT EMPLOYEES IN THE ENGINEERING DEPARTMENT, FILTRATION PLANT, PARKS AND RECREATION DEPARTMENT, WELFARE DEPARTMENT, MESSENGERS AND JANITORS ARE INCLUDED IN THE BARGAINING UNIT.

5. SECTION 26 OF THE POLICE ACT R.S.O., c. 298 FORBIDS MEMBERS OF A POLICE FORCE FROM BECOMING MEMBERS OF A TRADE UNION. BY SECTION 6(1) OF AN ACT TO AMEND THE POLICE ACT, STATUTES OF ONTARIO, 1965, c. 99, ALL EMPLOYEES IN A POLICE FORCE ARE DEEMED TO BE MEMBERS OF THE POLICE FORCE. HAVING REGARD TO THE ABOVE PROVISIONS AND SECTION 2(D) OF THE LABOUR RELATIONS ACT, THE BOARD FINDS THAT THE EMPLOYEES OF THE POLICE DEPARTMENT ARE NOT ELIGIBLE FOR INCLUSION IN THE BARGAINING UNIT.

6. MR. J. E. LEONARD, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT BACK TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF AGATHE TERRANCE WHO IS CLASSIFIED AS ASSISTANT TO THE CLERK-ADMINISTRATOR.

16167-69-R: LOCAL 804, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, (A.F.L. - C.I.O. - C.L.C.) (APPLICANT) v. GRAND RIVER CABLE T. V. LIMITED (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: ROBERT FRASER, DAVID BUTT FOR THE APPLICANT; PETER H. MANDELL FOR THE RESPONDENT.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER R. W. TEAGLE: JUNE 4, 1969.

1. THE APPLICANT HAS APPLIED FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF THE RESPONDENT'S EMPLOYEES IN KITCHENER, GALT AND STRATFORD ENGAGED AS TECHNICIANS AND INSTALLERS.

2. THE RESPONDENT SUBMITTED THAT THE BOARD DOES NOT HAVE JURISDICTION TO DEAL WITH THIS APPLICATION AS THE NATURE OF ITS BUSINESS, CABLE T.V., BRINGS MATTERS RELATING TO LABOUR RELATIONS WITHIN THE JURISDICTION OF THE PARLIAMENT OF CANADA. THE RESPONDENT RELIES ON THE PROVISIONS OF THE BRITISH NORTH AMERICA ACT 1867 30 - 31 VICTORIA CHAPTER 3, PARTICULARLY SECTION 92(10)(C) THEREOF, AND THE BROADCASTING ACT, STATUTE OF CANADA 16 - 17 ELIZ. II CHAPTER 25, UNDER WHICH THE RESPONDENT IS LICENSED. THE BOARD HEARD THE PARTIES' REPRESENTATIONS AS TO ITS JURISDICTION IN THIS MATTER AND RESERVED ITS DECISION WITHOUT DEALING IN ANY WAY WITH THE OTHER RELEVANT MATTERS TO THIS APPLICATION.

3. SECTION 92(10) OF THE BRITISH NORTH AMERICA ACT IS AS FOLLOWS:

"92. IN EACH PROVINCE THE LEGISLATURE MAY EXCLUSIVELY MAKE LAWS IN RELATION TO MATTERS COMING WITHIN THE CLASSES OF SUBJECTS NEXT HEREINAFTER ENUMERATED; THAT IS TO SAY,--"

10. LOCAL WORKS AND UNDERTAKINGS OTHER THAN SUCH AS ARE OF THE FOLLOWING CLASSES:--

- (a) LINES OF STEAM AND OTHER SHIPS, RAILWAYS, CANALS, TELEGRAPHS, AND OTHER WORKS AND UNDERTAKINGS CONNECTING THE PROVINCE WITH ANY OTHER OR OTHERS OF THE PROVINCES, OR EXTENDING BEYOND THE LIMITS OF THE PROVINCE;
- (b) LINES OF STEAM SHIPS BETWEEN THE PROVINCE AND ANY BRITISH OR FOREIGN COUNTRY;
- (c) SUCH WORKS AS, ALTHOUGH WHOLLY SITUATE WITHIN THE PROVINCE, ARE BEFORE OR AFTER THEIR EXECUTION DECLARED BY THE PARLIAMENT OF CANADA TO BE FOR THE GENERAL ADVANTAGE OF CANADA OR FOR THE ADVANTAGE OF TWO OR MORE OF THE PROVINCES."

4. THE RELEVANT SECTIONS OF THE BROADCASTING ACT ARE AS FOLLOWS:

"2.(a) BROADCASTING UNDERTAKINGS IN CANADA MAKE USE OF RADIO FREQUENCIES THAT ARE PUBLIC PROPERTY AND SUCH UNDERTAKINGS CONSTITUTE A SINGLE SYSTEM, HEREIN REFERRED TO AS THE CANADIAN BROADCASTING SYSTEM, COMPRISING PUBLIC AND PRIVATE ELEMENTS."

"3.(d) "BROADCASTING UNDERTAKING" INCLUDES A BROADCASTING TRANSMITTING UNDERTAKING, A BROADCASTING RECEIVING UNDERTAKING AND A NETWORK OPERATION, LOCATED IN WHOLE OR IN PART WITHIN CANADA OR ON A SHIP OR AIRCRAFT REGISTERED IN CANADA."

THE RESPONDENT OBTAINS ITS RIGHT TO OPERATE THROUGH ITS LICENSE ISSUED UNDER THE BROADCASTING ACT, TO CARRY ON A BROADCASTING UNDERTAKING AS A BROADCASTING RECEIVING UNDERTAKING AS DEFINED IN SECTION 3(d) ABOVE. UNDER SECTION 2(a) OF THE BROADCASTING ACT, SUCH BROADCASTING UNDERTAKINGS ARE DECLARED TO CONSTITUTE A SINGLE CANADIAN BROADCASTING SYSTEM. IN OUR OPINION, WHILE THE WORK WITH WHICH WE ARE HERE CONCERNED DOES NOT FALL WITHIN ANY OF THE ENUMERATED CLASSES OF SECTION 91 OF THE BRITISH

NORTH AMERICA ACT WHICH ARE RESERVED BY THE PARLIAMENT OF CANADA, BROADCASTING DOES FALL WITHIN THE EXCEPTIONS SET OUT IN SECTION 92(10)(c) OF THAT ACT AS BEING A WORK FOR THE GENERAL ADVANTAGE OF CANADA.

5. HAVING REGARD TO THE ABOVE, IT IS THE BOARD'S OPINION THAT IT DOES NOT HAVE JURISDICTION TO ENTERTAIN THIS APPLICATION.

6. THESE PROCEEDINGS ARE ACCORDINGLY TERMINATED.

DISSENT OF BOARD MEMBER E. BOYER: JUNE 4, 1969.

I DISSENT. SINCE THE UNDERTAKING OF THE RESPONDENT LIES SOLELY WITHIN A RESTRICTED AREA IN THE PROVINCE OF ONTARIO AND THE EMPLOYEES CONCERNED IN THIS APPLICATION ARE INVOLVED IN THE INSTALLATION OF CABLE IN THAT AREA, I FIND THAT THE BROADCASTING ACT DOES NOT APPLY IN THIS SITUATION TO REMOVE JURISDICTION FROM THE PROVINCE OF ONTARIO TO LEGISLATE WITH RESPECT TO LABOUR RELATIONS.

16171-69-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. ESSEX CABINET MAKERS (ONTARIO) LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: ALBERT LALONDE FOR THE APPLICANT, F. W. KNIGHT AND K. G. BENTLEY FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 5, 1969.

• • •

3. THE EVIDENCE IS THAT THE EMPLOYEES OF THE RESPONDENT FABRICATE WOOD PRODUCTS IN THE RESPONDENT'S PLANT AND THAT SOME OF THESE SAME EMPLOYEES INSTALL THE PRODUCTS IN BUILDINGS UNDER CONSTRUCTION. COUNSEL FOR THE RESPONDENT ARGUES THAT BECAUSE OF THE NATURE OF ITS OPERATION, THE RESPONDENT IS AN EMPLOYER WHO OPERATES A BUSINESS IN THE CONSTRUCTION INDUSTRY WITHIN THE MEANING OF SECTION 90(A) OF THE LABOUR RELATIONS ACT. COUNSEL SUBMITS THAT IN THESE CIRCUMSTANCES, THE APPLICANT CAN ONLY APPLY FOR CERTIFICATION UNDER THE CONSTRUCTION INDUSTRY SECTIONS OF THE ACT.

THUS, IF THERE IS A CLEAR-CUT PROHIBITION OR EXPRESS EXCLUSION WITH RESPECT TO A CERTAIN CLASS OF PERSONS (SEE CANADIAN CANNERS LIMITED CASE, O.L.R.B. MONTHLY REPORT, MAY 1965, P. 126, ALDERSHOT CONTRACTORS EQUIPMENT RENTAL LIMITED CASE, O.L.R.B. MONTHLY REPORT, JUNE 1965, P. 170), THE BOARD WILL REFUSE TO CERTIFY AN APPLICANT UNION IF THE CLASS OF PERSONS IN QUESTION IS TO BE INCLUDED IN THE BARGAINING UNIT WHICH THE BOARD FINDS TO BE APPROPRIATE FOR COLLECTIVE BARGAINING. THE REASON FOR THIS IS THAT A TRADE UNION IS CERTIFIED AS BARGAINING AGENT FOR ALL EMPLOYEES IN THE BARGAINING UNIT WHICH THE BOARD FINDS TO BE APPROPRIATE AND, IF THE UNION IN QUESTION WILL NOT ADMIT TO MEMBERSHIP ALL OF THE PERSONS FOR WHOM IT WOULD BE CERTIFIED TO REPRESENT, THE BOARD WILL REFUSE CERTIFICATION IN SUCH CIRCUMSTANCES. TO THAT EXTENT AND FOR THAT PURPOSE, THEN, THE BOARD DOES HAVE REGARD TO UNION CONSTITUTIONS.

ON THE OTHER HAND, THE BOARD HAS ALSO SAID IF THERE IS NO EXPRESS EXCLUSION (Cf. ALDERSHOT CONTRACTORS EQUIPMENT RENTALS LIMITED, SUPRA, N. D. APPLEGATE LTD. CASE, O.L.R.B. MONTHLY REPORT, MAY 1963, P. 104) OF A PARTICULAR CLASS OR CLASSES OF EMPLOYEES AFFECTED BY THE APPLICATION, IT WILL NOT ENTERTAIN AN OBJECTION TO THE APPLICATION BASED ON THE ELIGIBILITY PROVISIONS OF AN APPLICANT UNION'S CONSTITUTION. IN A CASE OF THIS NATURE THE BOARD MAY ALSO HAVE REGARD TO THE INTERPRETATION WHICH RESPONSIBLE OFFICIALS OF THE UNION HAVE PLACED ON THE PROVISIONS OF THE CONSTITUTION AND TO THE PRACTICE OF THE UNION WITH RESPECT TO THE ADMISSION OF PERSONS AS MEMBERS. SEE WAYNE PUMP CANADA LIMITED, O.L.R.B. MONTHLY REPORT, OCTOBER 1966, P. 489; JOHN E. RIDDELL AND SON LTD. CASE, 2 C.L.S. 76-564.

FURTHERMORE, EVEN WHERE THERE IS AN EXPRESS EXCLUSION IN A UNION CONSTITUTION, IT IS IMPLICIT IN THE CANADIAN CANNERS LIMITED CASE, SUPRA, THAT THE INTERPRETAION PLACED ON THE CONSTITUTION BY THE UNION'S RESPONSIBLE OFFICERS OR PROOF OF UNEQUIVOCAL PAST PRACTICES OF ADMISSION AS MEMBERS OF PERSONS COMING WITHIN THE EXCLUSIONARY CLASS WILL OVERCOME THE LANGUAGE OF THE CONSTITUTION. THERE IS NO DOUBT IN OUR MINDS THAT THIS ACCURATELY REFLECTS BOARD POLICY AND, FURTHER, THAT THE HIGH SCHOOL BOARD OF EASTVIEW CASE IS IN LINE WITH THIS POLICY.

4. THE POLICY OF THE BOARD WHERE AN EMPLOYER CARRIES ON BOTH SHOP AND "ON SITE" OPERATIONS WAS MOST RECENTLY DEALT WITH IN A DECISION DATED APRIL 25TH, 1969, IN THE CANADIAN PITTSBURGH INDUSTRIES LIMITED CASE (BOARD FILE NO. 15984-69-M). THE RELEVANT PORTION OF THAT DECISION READS AS FOLLOWS:

... HAVING REGARD TO THE "ON SITE" REQUIREMENTS CONTAINED IN THE DEFINITION OF "CONSTRUCTION INDUSTRY" IN SECTION 1(1)(DA) OF THE ACT, THE BOARD HAS CONSISTENTLY TAKEN THE POSITION THAT A TRADE UNION IS NOT ENTITLED TO APPLY UNDER SECTION 92 FOR CERTIFICATION AS BARGAINING AGENT FOR A GROUP OF EMPLOYEES ENGAGED IN BOTH SHOP OR YARD OPERATIONS AND ON SITE WORK. SEE, FOR EXAMPLE, CARL J. LEHMAN & SONS LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1967, P. 615 AT P. 616; WILLIAM FINKLE MACHINE LIMITED CASE, O.L.R.B. MONTHLY REPORT, DECEMBER 1968, P. 911; BERGMAN & NELSON LIMITED CASE, O.L.R.B. MONTHLY REPORT, NOVEMBER 1966, P. 594. IN DEALING WITH SUCH CASES THE BOARD HAS NOT LOOKED AT PERCENTAGES. IT HAS TAKEN THE POSITION THAT WHERE BOTH TYPES OF EMPLOYEES ARE SOUGHT TO BE INCLUDED IN THE BARGAINING UNIT THE APPLICATION MUST BE DEALT WITH AS ONE OUTSIDE OF THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT.

5. HAVING REGARD TO THE UNIT OF EMPLOYEES FOR WHICH THE APPLICANT IS SEEKING CERTIFICATION AND THE NATURE OF THE RESPONDENT'S OPERATION, THE BOARD THEREFORE FINDS THAT THE APPLICATION OF THE APPLICANT WAS PROPERLY MADE UNDER THE GENERAL RATHER THAN THE CONSTRUCTION INDUSTRY SECTIONS OF THE ACT.

6. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF ITS SHOP AT OTTAWA, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 22ND, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

16177-69-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA A.F.L. C.I.O. C.L.C. (APPLICANT) v. BROADVIEW POULTRY FARMS LTD. (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: L. A. MACLEAN AND D. M. DAYMAN FOR THE APPLICANT, F. R. VON VEH AND ROBERT ATKINSON FOR THE RESPONDENT, DENNIS FERNAND RUEL ON HIS OWN BEHALF.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER O. HODGES: JUNE 17, 1969.

• • •

2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT PETERBOROUGH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. THE BOARD NOTES THAT DOCUMENTS FILED IN OPPOSITION TO THIS APPLICATION BY CERTAIN EMPLOYEES OF THE RESPONDENT WERE FORWARDED TO THE BOARD BY "SPECIAL DELIVERY" RATHER THAN BY REGISTERED MAIL ON THE TERMINAL DATE OF THIS APPLICATION AND WERE NOT RECEIVED BY THE BOARD UNTIL THREE DAYS AFTER THE TERMINAL DATE. THE PROVISIONS OF SECTION 48 OF THE BOARD'S RULES OF PROCEDURE ARE SPECIFIC AND REQUIRE THAT EVIDENCE OF OBJECTION BY EMPLOYEES TO CERTIFICATION OF A TRADE UNION SHALL NOT BE ACCEPTED BY THE BOARD UNLESS IT IS FILED NOT LATER THAN THE TERMINAL DATE OF THE APPLICATION. SECTION 50(1)(B) PROVIDES THAT IF A DOCUMENT IS MAILED REGISTERED MAIL TO THE BOARD AT ITS OFFICE AT 8 YORK STREET, IT SHALL BE DEEMED TO HAVE BEEN FILED AT THE TIME IT IS MAILED. IN THIS CASE, THE DOCUMENTS FILED WITH THE BOARD WERE NOT FILED BY REGISTERED MAIL. HAVING REGARD TO THE FACTS SET OUT ABOVE AND FOR REASONS SIMILAR TO THOSE GIVEN BY THE BOARD IN THE ADDRESSOGRAPH-MULTIGRAPH OF CANADA LIMITED CASE, O.L.R.B. MONTHLY REPORT, MARCH 1968, p. 1183, THE BOARD IS NOT PREPARED TO ACCEPT THE DOCUMENTS WHICH WERE FILED SUBSEQUENT TO THE TERMINAL DATE AS INDICATIVE OF OPPOSITION BY EMPLOYEES OF THE RESPONDENT TO THE APPLICATION OF THE APPLICANT.

4. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 23RD, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE

BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

5. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER J.E.C. ROBINSON: JUNE 17, 1969.

WHILE I AGREE THAT THE DOCUMENTS FILED IN OPPOSITION TO THIS APPLICATION BY CERTAIN EMPLOYEES DID NOT SPECIFICALLY COMPLY WITH SECTION 48 AND SECTION 50(1)(B) OF THE BOARD'S RULES OF PROCEDURE, I MUST ALSO SAY THAT THE MAJORITY OF THE BOARD ARE BEING MOST TECHNICAL IN THEIR INTERPRETATION OF SUCH RULES.

THE EMPLOYEES GAVE EVIDENCE THAT THEY ATTENDED AT THE POST OFFICE ON THE TERMINAL DATE AFTER THE WICKET FOR FORWARDING REGISTERED MAIL HAD BEEN CLOSED. ACCORDINGLY, THEY FORWARDED THE MATERIAL BY "SPECIAL DELIVERY" ON THE TERMINAL DATE, A METHOD WHICH SHOULD BRING THE MATERIAL TO THE BOARD'S OFFICES MORE EXPEDITIOUSLY THAN IT WOULD BE, IF FORWARDED BY REGISTERED MAIL.

IT IS ALSO A FACT THAT THE BOARD IS NOT ALWAYS SO STRICT IN ITS INTERPRETATION OF ITS RULES OF PROCEDURE.

FOR EXAMPLE, SECTION 6 OF THE BOARD'S RULES OF PROCEDURE IS AS FOLLOWS:-

THE APPLICANT SHALL, NOT LATER THAN THE SECOND DAY AFTER THE TERMINAL DATE FOR THE APPLICATION, FILE A DECLARATION CONCERNING MEMBERSHIP DOCUMENTS IN FORM 8.

NOTWITHSTANDING THE SPECIFIC PROVISIONS OF SECTION 6 OF THE RULES OF PROCEDURE, IT IS A MATTER OF RECORD THAT THE BOARD HAS ALLOWED THE FILING OF THE FORM 8 UP TO AND INCLUDING THE TIME OF THE HEARING OF THE APPLICATION.

IF THE BOARD IS TO ENFORCE ITS RULES OF PROCEDURE STRICTLY, MY ONLY COMMENT IS THAT IT SHOULD DO SO FOR ALL PURPOSES.

16192-69-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) v. MILNES FUEL OIL LTD. (RESPONDENT) v. FUEL, BUS, LIMOUSINE, PETROLEUM DRIVERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 352 (INTERVENER).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS P. J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: Rod McPHERSON FOR THE APPLICANT; C. G. RIGGS, J. L. MORRISON, W. GASTON FOR THE RESPONDENT; B. CHERCOVER FOR THE INTERVENER.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER
P. J. O'KEEFFE: JUNE 26, 1969.

• • •

2. HAVING REGARD TO THE PARTICULAR CIRCUMSTANCES OF THIS MATTER AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD HAS DECIDED TO PROCEED WITH THE QUESTION AS TO WHETHER CERTAIN NAMED PERSONS APPEARING ON SCHEDULE A TO THE RESPONDENT'S REPLY ARE EMPLOYEES OF THE RESPONDENT.

3. ACCORDINGLY MR. D. K. AYNLEY, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE EMPLOYMENT STATUS OF PERSONS DESCRIBED ON SCHEDULE A TO THE RESPONDENT'S REPLY AS "SERVICE CONTRACTOR", AND ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT IN THIS MATTER.

DISSENT OF BOARD MEMBER J.E.C. ROBINSON: JUNE 26, 1969.

I DISSENT.

THE APPLICANT MADE APPLICATION FOR CERTIFICATION FOR ALL EMPLOYEES OF THE RESPONDENT IN TORONTO EXCEPT FOREMEN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND "OIL FUEL TRUCK DRIVERS WHOSE ACTIVITIES ARE NOT CONNECTED WITH SERVICING OF OIL BURNERS."

THE RESPONDENT MADE TWO ALTERNATIVE OBJECTIONS TO THIS APPLICATION:-

- 1) THAT THE PERSONS APPLIED FOR WERE INDEPENDENT CONTRACTORS, OR
- 2) THAT IF SUCH PERSONS APPLIED FOR WERE NOT INDEPENDENT CONTRACTORS, THEY WERE COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE FUEL, BUS, LIMOUSINE, PETROLEUM DRIVERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 352 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSE-MEN AND HELPERS OF AMERICA.

THIS SUBSISTING COLLECTIVE AGREEMENT IS DATED THE 17TH DAY OF JANUARY, 1969 AND IS EFFECTIVE UNTIL THE 30TH DAY OF SEPTEMBER, 1970.

FROM A PERUSAL OF SUCH COLLECTIVE AGREEMENT THERE IS NO DOUBT THAT IF THE PERSONS APPLIED FOR ARE NOT INDEPENDENT CONTRACTORS, THEY ARE COVERED BY SUCH AGREEMENT AND ACCORDINGLY THE PRESENT APPLICATION IS UNTIMELY PURSUANT TO THE PROVISIONS OF SECTION 5(2) OF THE ACT.

ACCORDINGLY, THERE BEING NO ISSUES TO BE DETERMINED IN THIS APPLICATION FOR CERTIFICATION THE APPOINTMENT OF AN EXAMINER IN THESE CIRCUMSTANCES BECOMES MERELY AN ACADEMIC EXERCISE IN FUTILITY WHICH WILL SERVE NO USEFUL PURPOSE TO THE BOARD IN DETERMINING THE MERITS OF THIS APPLICATION.

THAT BEING SO, I WOULD NOT APPOINT AN EXAMINER BUT WOULD DISMISS THE APPLICATION AT THIS TIME.

16201-69-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION,
LOCAL 327 (APPLICANT) v. THE SIOUX LOOKOUT GENERAL HOSPITAL
(RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
H. F. IRWIN AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: E. M. STENCER AND MARJORIE WHITTEN
FOR THE APPLICANT, D. ALAN PAGE, L.H.J. JOHNSTON AND H. KEFFER
FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 26, 1969.

• • •

3. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS HOSPITAL AT SIOUX LOOKOUT, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, REGISTERED NURSES, GRADUATE NURSES, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, DEPARTMENT HEADS, OFFICE MANAGER, SUPERVISORS, PERSONS ABOVE THE RANKS OF DEPARTMENT HEAD, OFFICE MANAGER AND SUPERVISOR, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

5. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT RELIEF DEPARTMENT HEADS, THE RELIEF OFFICE MANAGER, MARGARET A. MASKERINE, MADELLA H. SABALLA, ELSIE E. SUTTON AND ELIZABETH YARDUK ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

6. THE CONSTITUTION OF OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, WHICH IS THE PARENT UNION WHICH CHARTERED THE APPLICANT, CONTAINS THE FOLLOWING PROVISIONS:

ARTICLE III
JURISDICTION

THIS ORGANIZATION SHALL EMBRACE WITHIN ITS JURISDICTION ALL EMPLOYEES IN THE UNITED STATES, CANADA AND THE COMMONWEALTH OF PUERTO RICO EMPLOYED IN ANY PHASE OF PROFESSIONAL, TECHNICAL, OFFICE, CLERICAL AND RELATED WORK. THE MEMBERSHIP OF THIS INTERNATIONAL UNION SHALL CONSIST OF ALL LOCALS UNIONS, AND THE MEMBERS THEREOF, WITHIN THE JURISDICTION OF AND CHARTERED BY THIS INTERNATIONAL UNION.

ARTICLE IV
MEMBERSHIP

NO PERSON SHALL BE ADMITTED TO MEMBERSHIP IN ANY LOCAL UNION OF THE INTERNATIONAL UNION WHO IS NOT EMPLOYED AT AN OCCUPATION UNDER THE JURISDICTION OF THIS INTERNATIONAL UNION...

7. THE APPLICANT'S CONSTITUTION, WHICH IS IN THE STANDARD FORM USED BY ALL LOCALS OF THE INTERNATIONAL, CONTAINS SIMILAR PROVISIONS WHICH READ AS FOLLOWS:

ARTICLE IV
JURISDICTION

SECTION 1. THIS UNION SHALL EMBRACE WITHIN ITS MEMBERSHIP EMPLOYEES IN ANY PHASE OF PROFESSIONAL, TECHNICAL, OFFICE, CLERICAL AND RELATED WORK IN THE COMMONLY ACCEPTED SENSE OF THAT TERM COMING WITHIN ITS JURISDICTION ESTABLISHED UNDER THE CONSTITUTION OF THE OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION.

ARTICLE V
MEMBERSHIP

SECTION 1. NO PERSON SHALL BE ADMITTED TO MEMBERSHIP WHO IS NOT EMPLOYED AT AN OCCUPATION UNDER THE JURISDICTION OF THIS UNION... .

8. AT THE HEARING IN THIS MATTER, THE APPLICANT WAS REQUESTED TO SATISFY THE BOARD THAT IT COULD TAKE INTO MEMBERSHIP EMPLOYEES EMPLOYED IN THE OCCUPATIONAL CLASSIFICATIONS WITH WHICH WE ARE HERE CONCERNED AND WHICH ARE NOT WITHIN THE USUALLY ACCEPTED DEFINITION OF "PROFESSIONAL, TECHNICAL, OFFICE, CLERICAL AND RELATED WORK."

9. THE APPLICANT'S REPRESENTATIVE AT THE HEARING WHO WAS A RESPONSIBLE OFFICER OF THE APPLICANT ADVISED THE BOARD THAT THE APPLICANT WAS PREPARED TO TAKE INTO MEMBERSHIP ANY EMPLOYEE WHO MIGHT FALL WITHIN THE DESCRIPTION OF THE BARGAINING UNIT. IT WAS THE APPLICANT'S INTERPRETATION OF THE WORD "PROFESSIONAL" THAT THIS TERMINOLOGY INCLUDE ALL PERSONS WHO WORKED FOR WAGES. THE APPLICANT TOOK THE POSITION THAT THE TERM PROFESSIONAL DISTINGUISHED BETWEEN PERSONS WHO WERE PAID AND AMATEURS OR UNPAID PERSONS. THE APPLICANT ALSO INTRODUCED DOCUMENTARY EVIDENCE WHICH CLEARLY ESTABLISHED THAT SIX OR SEVEN OTHER CHARTERED LOCALS OF THE INTERNATIONAL WITH SIMILAR CONSTITUTION AS THE APPLICANT IN THIS CASE TOOK INTO MEMBERSHIP SUCH DIVERGENT CLASSIFICATIONS AS JANITORS, INSTRUMENT REPAIRMEN, EQUIPMENT MECHANICS, CAR CHECKERS, MESSENGERS, MAIDS, CUSTODIANS, EMPLOYEES IN A FILTRATION PLANT, EMPLOYEES IN A PARKS AND RECREATION DEPARTMENT, COOKS, BARTENDERS, CHAMBER-MAIDS, DISHWASHERS, WAITERS, PORTERS, LAUNDRY WORKERS, HOUSEKEEPERS, AND GARAGE UTILITY MAN. ON THE EVIDENCE BEFORE US, WE THEREFORE FIND THAT CHARTERED LOCALS OF THE OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION HAVE INTERPRETED THEIR CONSTITUTION AND HAVE ESTABLISHED A REGULAR PRACTICE OF ADMITTING AS MEMBERS PERSONS WHO MIGHT OTHERWISE BE EXCLUDED BY THE LANGUAGE OF THE APPLICANT'S CONSTITUTION.

10. HAVING REGARD TO THE BOARD'S FINDING AS SET OUT ABOVE AND THE DECISION OF THE BOARD IN THE CANADIAN CANNERS LIMITED CASE, O.L.R.B. MONTHLY REPORT, MAY 1965, P. 126, THE BOARD THEREFORE FINDS THAT THE INTERPRETATION PLACED ON THE CONSTITUTION BY THE APPLICANT'S RESPONSIBLE OFFICERS AND THE PROOF OF AN UNEQUIVOCAL PAST PRACTICE OF ADMISSION AS MEMBERS OF PERSONS COMING WITHIN THE EXCLUSIONARY CLASS HAVE OVERCOME WHAT WOULD OTHERWISE BE THE PROHIBITIVE LANGUAGE OF THE CONSTITUTION.

11. THE BOARD ACCORDINGLY FINDS THAT THE APPLICANT'S CONSTITUTION DOES NOT PRECLUDE THE APPLICANT FROM REPRESENTING ALL EMPLOYEES OF THE RESPONDENT WHO MIGHT BE INCLUDED IN THE BARGAINING UNIT IN THIS CASE.

12. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 30TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

13. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

16202-69-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION 880 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. THE ESSEX COUNTY HUMANE SOCIETY (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: W. W. TILLER FOR THE APPLICANT, W. GIBSON GRAY, Q.C., AND J. J. FITZSIMMONS FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 9, 1969.

• • •

3. THE RESPONDENT IN THIS MATTER REQUESTED THE BOARD TO EXCLUDE PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD FROM THE BARGAINING UNIT IN THIS MATTER. IT APPEARS THAT THE RESPONDENT'S PRACTICE IN THIS REGARD IS TO EMPLOY ONE PERSON IN THE CATEGORIES REFERRED TO AND THAT PERSON AT THE TIME THE APPLICATION WAS MADE WAS CLASSIFIED AS PART-TIME KENNEL WORKER (STUDENT).

4. WHILE IT IS THE BOARD'S USUAL PRACTICE TO EXCLUDE PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD FROM BARGAINING UNITS OF FULL-TIME EMPLOYEES AT THE REQUEST OF EITHER PARTY, SUCH PERSONS ARE ELIGIBLE TO BE INCLUDED IN A SEPARATE BARGAINING UNIT. IN THIS CASE, THERE WAS ONLY ONE PERSON IN THE CATEGORIES REFERRED TO AND WERE THAT PERSON DESIROUS TO BE REPRESENTED BY THE TRADE UNION HE WOULD BE EFFECTIVELY PREVENTED FROM BEING SO REPRESENTED IF THE BOARD WERE TO FOLLOW ITS USUAL PRACTICE OF EXCLUDING THESE CLASSIFICATIONS AT THE REQUEST OF THE RESPONDENT. IN ORDER THAT THE BOARD BE ENABLED TO FIND A BARGAINING UNIT OF 24 HOUR PEOPLE

AND STUDENTS TO BE APPROPRIATE, THERE MUST BE TWO OR MORE PERSONS IN SUCH BARGAINING UNIT. IN THIS CASE, IT IS THE RESPONDENT'S PRACTICE TO EMPLOY ONLY ONE PERSON IN THE CLASSIFICATIONS REFERRED TO. HAVING REGARD FOR THE REASONS GIVEN BY THE BOARD IN THE H. GRAY LIMITED CASE, CCH CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '55-'59, ¶16,011, C.L.S. 76-471, THE BOARD FINDS THAT THE FACTS OF THE INSTANT CASE CONSTITUTE A "MOST EXCEPTIONAL CIRCUMSTANCE". WHERE THERE IS ONLY ONE EMPLOYEE WHO WOULD BE ELIGIBLE FOR INCLUSION IN WHAT WOULD OTHERWISE BE AN APPROPRIATE BARGAINING UNIT AND WHERE, AS IN THIS CASE, THAT EMPLOYEE DESIRES TO BE REPRESENTED BY THE APPLICANT UNION, THE BOARD IN SUCH EXCEPTIONAL CIRCUMSTANCE SHOULD DEPART FROM ITS REGULAR PRACTICE OF FINDING A SEPARATE BARGAINING UNIT FOR THE EMPLOYEE CONCERNED. THE BOARD SHOULD THEREFORE INCLUDE SUCH EMPLOYEE IN THE BARGAINING UNIT IN THIS CASE.

5. THE BOARD THEREFORE FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT OFFICE MANAGER AND PERSONS ABOVE THE RANK OF OFFICE MANAGER, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 29TH, 1969, THE BOARD DETERMINES, UNDER SECTION 77(2) (J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

16242-69-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) v. LOBLAW GROCETERIES CO., LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: ALBERT LALONDE FOR THE APPLICANT, G. H. METCALFE AND F. D. KEAN FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 18, 1969.

• • •

3. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF CARPENTERS AND CARPENTERS' APPRENTICES. THE RESPONDENT SUBMITS THAT THE PROPOSED UNIT IS NOT APPROPRIATE AS THE RESPONDENT IS NOT ENGAGED IN THE CONSTRUCTION INDUSTRY.

4. THE EVIDENCE IS THAT THE RESPONDENT HAS A STAFF AT ITS OFFICES IN TORONTO WHO PLAN ALTERATIONS TO THE RESPONDENT'S STORES THROUGHOUT THE PROVINCE. IT ALSO HAS A NUMBER OF FOREMEN IN ITS EMPLOY WHICH THE RESPONDENT SENDS OUT TO SUPERVISE THE ALTERATIONS WHICH ARE MADE IN ANY OF ITS STORES. THE RESPONDENT, HOWEVER, HIRES THE EMPLOYEES IN THE CONSTRUCTION CRAFTS WHICH IT NEEDS THROUGH THE UNIONS CONCERNED IN THE LOCAL AREA. AS OF THE DATE OF THE MAKING OF THIS APPLICATION THE RESPONDENT WAS EMPLOYING 19 CARPENTERS FOR THE PURPOSES OF MAKING ALTERATIONS AT TWO STORES, ONE IN OTTAWA AND THE OTHER IN CYRVILLE. ALL OF THE CARPENTERS EMPLOYED BY THE RESPONDENT FOR THIS WORK WERE HIRED THROUGH THE APPLICANT UNION.

5. WHILE THE GENERAL NATURE OF THE RESPONDENT'S BUSINESS IS THE OPERATION OF RETAIL SUPERMARKETS, WE FIND THAT WITH RESPECT TO THE ALTERATION AND RENOVATION ASPECTS OF ITS BUSINESS THE RESPONDENT IS ENGAGED IN THE CONSTRUCTION INDUSTRY AS DEFINED IN SECTION 1(1)(DA) OF THE LABOUR RELATIONS ACT (SEE HAREB DEVELOPMENT LIMITED CASE, O.L.R.B. MONTHLY REPORT, MAY 1968, P. 181). WE FURTHER FIND THAT THE COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE RESPONDENT AND THE UNION OF CANADIAN RETAIL EMPLOYEES C.L.C. DOES NOT COVER THE EMPLOYEES FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION.

6. THE BOARD ACCORDINGLY FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

7. THE BOARD FURTHER FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON AND THE UNITED COUNTIES OF PRESCOTT AND RUSSELL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 6TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

16243-69-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. E. A. LISK & SONS, LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG, G. HARRISON AND R. WEDGE FOR THE APPLICANT; A. A. WHITE AND ED. LISKE FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 19, 1969.

• • •

3. THE APPLICANT APPLIED FOR CERTIFICATION AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT AT EGANVILLE. THE RESPONDENT DIRECTED THE ATTENTION OF THE BOARD TO THE FACT THAT THE RESPONDENT OWNED AND OPERATED A WHOLESALE BAKERY, AND I.G.A. FOODLINER AND A THEATRE IN EGANVILLE. IT WAS MANAGEMENT'S POSITION THAT ANY ONE ENTERPRISE COULD BE A BARGAINING UNIT, BUT IT EXPRESSED DOUBT THAT THE INCLUSION OF ALL EMPLOYEES IN ONE GROUP WOULD CONSTITUTE AN APPROPRIATE UNIT. THE UNION STATED THAT IT WAS PREPARED TO ACCEPT SEPARATE UNITS. IN THE CIRCUMSTANCES, THE BOARD FINDS THAT THE EMPLOYEES OF EACH ENTERPRISE CONSTITUTE SEPARATE UNITS FOR COLLECTIVE BARGAINING DESCRIBED AS FOLLOWS:

(1) ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS BAKERY AT EGANVILLE, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.

(2) ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS I.G.A. FOODLINER AT EGANVILLE, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.

(3) ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS THEATRE AT EGANVILLE, SAVE AND EXCEPT THE MANAGER, PERSONS ABOVE THE RANK OF MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.

4. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 6, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

5. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO BARGAINING UNIT No. 1.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT No. 2, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 6, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO BARGAINING UNIT No. 2.

8. THE BOARD FURTHER FINDS ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN 45 PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT No. 3, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 6, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. THE APPLICATION WITH RESPECT TO BARGAINING UNIT No. 3 IS, THEREFORE, DISMISSED.

16255-69-R: TORONTO PRINTING PRESSMEN & ASSISTANTS' UNION LOCAL No. 10 (APPLICANT) v. PHOTO ENGRAVERS & ELECTROTYPEERS LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: A. W. HALL FOR THE APPLICANT, C. MORLEY AND J. SHAW FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 25, 1969.

• • •

3. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR ALL JOURNEYMAN MACHINISTS AND JOURNEYMAN ELECTRICIANS IN THE EMPLOY OF THE RESPONDENT AT ITS PLANT IN THE BOROUGH OF ETOBICOKE. THE RESPONDENT SUBMITS THAT THE ONLY APPROPRIATE UNIT WOULD BE A "TAG-END" UNIT COMPOSED OF THE EMPLOYEES OF THE RESPONDENT WHO ARE NOT ALREADY COVERED BY SUBSISTING COLLECTIVE AGREEMENTS.

4. THE RESPONDENT IS BASICALLY A PRINTING HOUSE, ENGAGED IN THE PRODUCTION OF CATALOGUES FOR A NUMBER OF CUSTOMERS. THE COMPANY'S FACILITIES ENABLE IT TO PRODUCE ARTWORK IN ITS OWN STUDIO DEPARTMENT, PROCESS THAT ARTWORK THROUGH PHOTO-ENGRAVING DEPARTMENTS, RUN THE ENGRAVED CYLINDERS IN THE PRESSROOM SO AS TO PRODUCE COPY AND ULTIMATELY BIND THIS MATERIAL IN ITS BINDERY. AS WELL AS ITS LOCATION IN THE BOROUGH OF ETOBICOKE, THE RESPONDENT HAS ANOTHER LOCATION IN THE CITY OF TORONTO. THE MACHINISTS AND ELECTRICIANS FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION ALL PERFORM MAINTENANCE FUNCTIONS AT THE RESPONDENT'S ETOBICOKE PLANT. AT THE SAME PLANT THERE ARE ALSO PORTERS WHO PERFORM HOUSEKEEPING FUNCTIONS. IN ADDITION, THE RESPONDENT EMPLOYS AT ITS ETOBICOKE PLANT CARPENTERS, TRUCKERS, BALER OPERATORS, MAINTENANCE HELPERS, WATCHMEN, AND A SHIPPER-RECEIVER. MANY OF THE RESPONDENT'S EMPLOYEES ARE COVERED BY COLLECTIVE AGREEMENTS. NONE OF THE ABOVE CLASSIFICATIONS, HOWEVER, ARE REPRESENTED BY A TRADE UNION. THERE ARE ALSO UNORGANIZED EMPLOYEES EMPLOYED AT THE RESPONDENT'S PREMISES IN THE CITY OF TORONTO.

5. HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES, WE FIND THAT THE UNIT APPLIED FOR BY THE APPLICANT IS NOT APPROPRIATE FOR COLLECTIVE BARGAINING. RATHER THE ONLY APPROPRIATE UNIT WOULD BE A "TAG-END" UNIT. WHETHER OR NOT THE "TAG-END" SHOULD INCLUDE THE EMPLOYEES AT BOTH LOCATIONS IN METROPOLITAN TORONTO IS NOT A MATTER WHICH IT IS NECESSARY FOR THE BOARD TO DECIDE IN THIS APPLICATION.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE PERSONS IN ANY UNIT WHICH THE BOARD WOULD FIND TO BE APPROPRIATE FOR COLLECTIVE BARGAINING, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 11TH, 1969, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. THE APPLICATION ACCORDINGLY IS DISMISSED.

INDEXED ENDORSEMENT - TERMINATION

16157-69-R: RUTH PULLMAN AND SHARON SCOTT (APPLICANTS) v. THE INTERNATIONAL UNION OF DOLL AND TOY WORKERS OF THE U.S.A. AND CANADA, LOCAL 905 (RESPONDENT).

(RE: STRATHMORE DIVISION OF SOMERVILLE INDUSTRIES LIMITED)

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: RUTH PULLMAN AND SHARON SCOTT FOR THE APPLICANTS; THOMAS CORRIGAN AND G. DAVIS FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 19, 1969.

1. THIS IS AN APPLICATION FOR DECLARATION TERMINATING BARGAINING RIGHTS OF THE RESPONDENT.

2. IN SUPPORT OF THE APPLICATION THERE WERE FILED WITH THE BOARD TWO DOCUMENTS INDICATING THAT THE SIGNATORIES, EMPLOYEES OF STRATHMORE DIVISION OF SOMERVILLE INDUSTRIES LIMITED, NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION HEREIN. ONE OF THE PETITIONS IS DATED MAY 7, 1969 AND BEARS 19 SIGNATURES OF EMPLOYEES, THE OTHER PETITION CARRIES 17 SIGNATURES OF EMPLOYEES, ALL OF WHICH ARE DUPLICATES OF SIGNATURES ON THE MAY 7TH DOCUMENT. BOTH DOCUMENTS BEAR THE SIGNATURES OF SHARON SCOTT AND RUTH PULLMAN WHO APPEARED BEFORE THE BOARD ON BEHALF OF THE EMPLOYEES CONCERNED. RUTH PULLMAN IS THE SHOP STEWARD AND SHARON SCOTT THE ASSISTANT SHOP STEWARD IN THE RESPONDENT UNION. THE DOCUMENT DATED MAY 7TH WAS FORWARDED TO THE BOARD WITH THE ORIGINAL APPLICATION. SHARON SCOTT TESTIFIED THAT WHEN SHE RECEIVED THE CUSTOMARY FORMS FROM THE REGISTRAR, SHE THOUGHT THAT IT WAS NECESSARY TO FILE A FURTHER PETITION. THIS WAS APPARENTLY A MISUNDERSTANDING ON HER PART. IN ANY EVENT, SHE CALLED A MEETING OF EMPLOYEES IN THE PLANT CAFETERIA AND HAD THE SECOND PETITION SIGNED AT THAT TIME AND FORWARDED IT TO THE BOARD.

3. THE FIRST DOCUMENT HAD ALSO BEEN SIGNED AT A MEETING CALLED BY SCOTT AND PULLMAN IN THE PLANT CAFETERIA.

4. AT THE CLOSE OF THE EVIDENCE, THE RESPONDENT SUGGESTED THAT THE APPLICATION SHOULD BE DISMISSED BECAUSE THE STYLE OF CAUSE NAMED THE EMPLOYER COMPANY AS APPLICANT RATHER THAN THE EMPLOYEES. THE RESPONDENT'S ARGUMENT WAS THAT IT WAS EVIDENT ON

THE FACE OF THE DOCUMENT THAT THE APPLICATION WAS COMPANY INSPIRED AND THEREFORE COULD NOT BE BASED UPON THE VOLUNTARY WISHES OF THE EMPLOYEES. IN THE LIGHT OF ALL THE EVIDENCE, WE FIND NO MERIT IN THE ARGUMENT. WE ARE SATISFIED THAT THE DOCUMENTS WERE ALL PREPARED AND FILED BY PULLMAN AND SCOTT AND THAT THIS FACT WAS AMPLY CLEAR TO THE RESPONDENT AT ALL RELEVANT TIMES. THAT PORTION OF THE APPLICATION FORM PROVIDED FOR INDICATING THE ADDRESS OF THE APPLICANT SHOWS "EMPLOYEES OF STRATHMORE DIVISION OF SOMERVILLE INDUSTRIES LIMITED". THE APPLICATION INDICATES THAT IT IS BROUGHT UNDER THE PROVISIONS OF SECTION 43 OF THE LABOUR RELATIONS ACT, A SECTION UNDER WHICH ONLY EMPLOYEES MAY APPLY. IN ADDITION, THE RESPONDENT WAS SERVED BY THE BOARD WITH COPIES OF THE APPLICATIONS SIGNED BY PULLMAN AND SCOTT AS SHOP STEWARD AND ASSISTANT SHOP STEWARD RESPECTIVELY OF THE UNION RESPONDENT. IT WAS INDICATED TO THE RESPONDENT THAT THE PETITIONS HAD BEEN SIGNED BY 19 AND 17 EMPLOYEES RESPECTIVELY. THE RETURNS SHOW THERE WERE 18 EMPLOYEES ON THE DATE OF APPLICATION. THIS INDICATES THAT THE VAST MAJORITY OF EMPLOYEES HAD SIGNED AND, OF COURSE, THAT THE EMPLOYEES WERE AWARE OF WHAT WAS TRANSPIRING AND, MORE TO THE POINT, HAD SIGNED PRIOR TO THE POSTING OF THE NOTICE OF APPLICATION.

5. THERE IS NO DOUBT UPON THE EVIDENCE THAT THE PETITION WAS ORIGINATED AND CIRCULATED BY RUTH PULLMAN AND SHARON SCOTT, BOTH OF WHOM ARE, AS NOTED, SHOP STEWARDS OF THE RESPONDENT UNION. IN OUR OPINION, BOTH DOCUMENTS CLEARLY COMprise A VOLUNTARY WRITTEN SIGNIFICATION BY THE EMPLOYEES THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT.

6. IN THESE PARTICULAR CIRCUMSTANCES, THE BOARD IS SATISFIED THAT A BONA FIDE MISTAKE WAS MADE BY PULLMAN AND SCOTT IN THE PREPARATION OF THE APPLICATION WHEREIN THEY INCORRECTLY NAMED THE APPLICANT. THERE WAS NO SUGGESTION THAT ANY SUBSTANTIAL HARM OR MISCARRIAGE OF JUSTICE HAD RESULTED BY REASON OF THE MISTAKE. THE SUBMISSION WAS CONFINED TO THE ARGUMENT THAT BECAUSE THE COMPANY WAS NAMED AS APPLICANT, AN INFERENCE SHOULD BE DRAWN THAT IT WAS A PARTY TO THE PETITION. WE FIND THE EVIDENCE RUNS COUNTER TO SUCH AN INFERENCE. THE BOARD PURSUANT TO THE PROVISIONS OF SECTION 78 OF THE LABOUR RELATIONS ACT HEREBY ORDERS THAT THE PROPER NAME OF THE APPLICANTS BE SUBSTITUTED SO AS TO SHOW RUTH PULLMAN AND SHARON SCOTT AS APPLICANTS AND THAT THE NAME OF THE APPLICANT SHOWN IN THE ORIGINAL STYLE OF CAUSE BE DELETED.

7. THE BOARD ACCORDINGLY FINDS ON ALL THE EVIDENCE THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF STRATHMORE DIVISION OF SOMERVILLE INDUSTRIES LIMITED IN THE BARGAINING UNIT HAS SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT.

8. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF EMPLOYEES OF STRATHMORE DIVISION OF SOMERVILLE INDUSTRIES LIMITED. THOSE ELIGIBLE TO VOTE ARE ALL EMPLOYEES OF STRATHMORE DIVISION OF SOMERVILLE INDUSTRIES LIMITED AT ITS STRATHROY PLANT, SAVE AND EXCEPT FOREMEN AND SUPERVISORS, HOME WORKERS, DRIVERS AND OFFICE STAFF ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE RESPONDENT.

9. THE MATTER IS REFERRED TO THE REGISTRAR.

INDEXED ENDORSEMENT - STRIKE UNLAWFUL

16214-69-U: PIGOTT CONSTRUCTION COMPANY LIMITED (APPLICANT) v. NICHOLAS ZACOTA ET AL (RESPONDENTS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: B. W. BINNING AND D. STEVENS FOR THE APPLICANT; STANLEY SIMPSON, C. GUAGLIANO AND T. FENWICK FOR THE RESPONDENTS.

DECISION OF VICE-CHAIRMAN, RORY F. EGAN AND BOARD MEMBER R.W. TEAGLE: JUNE 16, 1969.

1. THIS IS AN APPLICATION FOR A DECLARATION THAT A STRIKE ENGAGED IN BY EMPLOYEES OF THE APPLICANT IS UNLAWFUL.

2. THE EVIDENCE ESTABLISHED THAT EACH OF THE RESPONDENTS IS AN EMPLOYEE OF THE APPLICANT AND THAT EACH STOPPED WORK ON WEDNESDAY, MAY 21, 1969. NONE OF THE RESPONDENTS HAVE WORKED FOR THE APPLICANT SINCE THAT DATE. AT THE TIME OF THE CESSION OF WORK, THERE WAS A COLLECTIVE AGREEMENT IN FORCE BETWEEN THE APPLICANT AND LOCAL UNION 18, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, HEREINAFTER REFERRED TO AS LOCAL 18. THE COLLECTIVE AGREEMENT COVERS THE RESPONDENTS HEREIN.

3. IT IS COMMON GROUND THAT THE SOURCE OF THE CESSION OF WORK IS A JURISDICTIONAL DISPUTE BETWEEN LOCAL 18 AND THE INTERNATIONAL ASSOCIATION OF BRIDGE STRUCTURAL AND ORNAMENTAL IRON WORKERS, HEREINAFTER REFERRED TO AS THE IRON WORKERS, WITH RESPECT TO THE INSTALLATION OF ENAMELLED PANELS ON THE FACE OF THE JOSEPH BRANT MEMORIAL HOSPITAL AT BURLINGTON BY EMPLOYEES OF A SUBCONTRACTOR TO THE APPLICANT. THE COLLECTIVE AGREEMENT OBLIGATES THE APPLICANT TO CONTROL THE WORK ASSIGNMENTS OF THE SUBCONTRACTOR.

4. THE JURISIDCTIONAL DISPUTE WAS SUBMITTED TO THE NATIONAL JOINT BOARD FOR SETTLEMENT OF JURISDICTION DISPUTES, BUILDING AND CONSTRUCTION INDUSTRY, IN WASHINGTON, D.C. FOR A JOB DECISION. THIS IS IN ACCORDANCE WITH ARTICLE 15.3 OF THE COLLECTIVE AGREEMENT. THE REQUEST WAS MADE BY LOCAL 18, SUPPORTED BY THE APPLICANT.

5. BY LETTER DATED MAY 9, 1969, THE NATIONAL JOINT BOARD ADVISED THE UNIONS CONCERNED AND THE APPLICANT HEREIN THAT IT, THE JOINT BOARD, HAD VOTED TO MAKE THE FOLLOWING JOB DECISION:

"THE INSTALLATION OF EXTERIOR PORCELAIN PANELS ATTACHED TO WOOD SHALL BE ASSIGNED TO CARPENTERS ON THE BASIS OF TRADE PRACTICE. IN OTHER RESPECT THERE IS NO BASIS TO CHANGE THE CONTRACTOR'S ASSIGNMENT."

6. ON TUESDAY, MAY 20, 1969, FOLLOWING UPON THE RECEIPT OF THE ABOVE DECISION OF THE JOINT BOARD, THE WORK WAS ASSIGNED BY THE SUBCONTRACTOR TO TWO CARPENTERS WHO WERE SUPERVISED BY A MEMBER OF THE IRON WORKERS UNION. ON WEDNESDAY, MAY 21, 1969, HOWEVER, THE SUBCONTRACTOR ASSIGNED TWO IRON WORKERS TO THE PANEL INSTALLATION WORK, THUS CREATING A COMPOSITE WORK FORCE OF CARPENTERS AND IRON WORKERS. THE CARPENTERS TOOK THE POSITION THAT THE JOINT BOARD DECISION AWARDED ALL OF THE PANEL INSTALLATION WORK TO THE CARPENTERS ALONE AND, THOMAS FENWICK, BUSINESS REPRESENTATIVE FOR LOCAL 18 OF THE CARPENTERS "PULLED THE CARPENTERS OFF THE JOB" BECAUSE, HE ALLEGES, PIGOTT DID NOT CAUSE THE SUBCONTRACTOR TO IMPLEMENT THE JOINT BOARD AWARD. THE IRON WORKERS AND THE SUBCONTRACTOR APPARENTLY INTERPRETED THE JOINT BOARD AWARD AS AUTHORIZING A COMPOSITE CREW.

7. PIGOTT, THE APPLICANT, WIRED THE JOINT BOARD ON MAY 20, 1969, ADVISING IT THAT THE IRON WORKERS AND THE CARPENTERS COULD NOT AGREE ON THE INTERPRETATION OF ITS DECISION. AGAIN, ON MAY 21, 1969, PIGOTT WIRED THE JOINT BOARD TO REPORT THAT THE CARPENTERS WERE STRIKING AND REQUESTED THAT INSTRUCTIONS BE SENT TO THE CARPENTERS TO RETURN TO WORK.

8. THE JOINT BOARD WROTE TO THE GENERAL PRESIDENTS OF THE CARPENTERS AND IRON WORKERS RESPECTIVELY. THE LETTER, DATED MAY 21, 1969, REQUESTED THE PRESIDENTS TO SEE THAT THEIR RESPECTIVE MEMBERS RETURNED TO THE JOB, IT ALSO CONTAINS THE FOLLOWING PARAGRAPH:

"IN THE OPINION OF THIS OFFICE, NO FURTHER CLARIFICATION OF THIS JOB DECISION SHOULD BE REQUIRED. HOWEVER, IF THERE DOES EXIST A CONTINUING DISPUTE REGARDING THE INTERPRETATION OF THIS DECISION, PLEASE SUPPLY COMPLETE DETAILS TO THIS OFFICE SO THAT ANY NECESSARY CLARIFICATION CAN BE MADE BY THE JOINT BOARD."

9. THE RESPONDENTS RELY UPON THE PROVISIONS OF ARTICLE 15 OF THE COLLECTIVE AGREEMENT WHICH HAS TO DO WITH THE RESOLUTION OF JURISDICTIONAL DISPUTES, AS AN ANSWER TO THE PRESENT APPLICATION. IN PARTICULAR, RELIANCE IS PLACED UPON ARTICLE 15.6 WHICH IS EXPRESSED IN THE FOLLOWING TERMS:

"15.6 NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY EITHER EXPRESSED OR IMPLIED, THERE SHALL BE NO WORK STOPPAGE OR INTERFERENCE WITH THE PROGRESS OF THE WORK WHILE THE PROVISIONS OF ARTICLE 15 OF THIS AGREEMENT ARE BEING PROCESSED AND COMPLIED WITH. HOWEVER, IF THE PROVISIONS OF 15.1 AND 15.3 OF THIS AGREEMENT ARE NOT COMPLIED WITH, THE UNION SHALL HAVE THE RIGHT TO WITHDRAW ITS MEMBERS FROM THE WORK SITE IN QUESTION."

10. THE RESPONDENTS ARGUE THAT THE ACTION TAKEN BY THEM IS NOT A STRIKE WITHIN THE MEANING OF THE LABOUR RELATIONS ACT BECAUSE THE EMPLOYER HAS AGREED, IN ARTICLE 15.6, THAT WHERE THERE IS A DISAGREEMENT ARISING OUT OF A JURISDICTIONAL DISPUTE, THE MEMBERS OF THE UNION MAY WITHDRAW FROM THE WORK SITE IN QUESTION WHERE THE CIRCUMSTANCES SET OUT IN THE ARTICLE PREVAIL. THIS, THEY SAY IS THE SITUATION IN THE PRESENT CASE. THERE IS A DISPUTE AS NOTED ABOVE CENTERING AROUND THE QUESTION AS TO WHETHER THE APPLICANT THROUGH ITS SUBCONTRACTOR HAS COMPLIED WITH THE PROVISIONS OF ARTICLE 15.3 WITH RESPECT TO THE IMPLEMENTATION OF THE DECISION OF THE NATIONAL JOINT BOARD OR NOT. THIS QUESTION, THE RESPONDENTS SAY IS ONE INVOLVING THE INTERPRETATION OF THE JOINT BOARD AWARD AND SHOULD BE RESOLVED BY A BOARD OF ARBITRATION AS PROVIDED FOR IN THE COLLECTIVE AGREEMENT, AND IS NOT FOR THIS BOARD TO DEAL WITH. AS IT HAPPENED, COUNSEL FOR BOTH PARTIES AGREED THAT THE FOREGOING QUESTION WAS NOT ONE TO WHICH THIS BOARD SHOULD ADDRESS ITSELF, AND WITH THIS WE AGREE.

11. THE RESPONDENTS SUBMITTED THAT EVEN IF THE BOARD DID NOT ACCEPT THE VALIDITY OF ARTICLE 15, IT SHOULD, IN THE EXERCISE OF ITS DISCRETION IN THE PRESENT SITUATION, REFUSE TO ISSUE A DECLARATION BECAUSE SOMETHING IN THE NATURE OF ESTOPPEL MUST BE FOUND TO LIE AGAINST THE APPLICANT BECAUSE IT HAD AGREED THAT EMPLOYEES MIGHT LEAVE THE JOB SITE IN THE CIRCUMSTANCES SET OUT IN 15.6. IN FURTHER SUPPORT OF THIS SUBMISSION ON ESTOPPEL, SO CALLED, THE RESPONDENTS URGED THAT THE EMPLOYER WAS RESPONSIBLE FOR THE CRISIS BY REASON OF ITS FAILURE TO HAVE THE QUESTION OF JURISDICTION SETTLED EARLY IN THE CONSTRUCTION SCHEDULES. THERE WAS EVIDENCE THAT THE CARPENTERS UNION HAD FORESEEN AND HAD FOREWARNED THE APPLICANT OF THE LATENT DIFFICULTIES WITH RESPECT TO THE WORK ON ENAMELLED PANELS AND HAD SOUGHT ITS COOPERATION IN SEEKING A JOINT BOARD RULING BEFORE ANY CONFRONTATION AROSE.

12. IT IS HARDLY NECESSARY TO OBSERVE THAT THE QUESTION OF THE VALIDITY OF SECTION 15.6 CANNOT BE DETERMINED WITHOUT REFERENCE TO THE LABOUR RELATIONS ACT.

13. SECTION 1(1)(i) OF THE ACT IS AS FOLLOWS:

"'STRIKE' INCLUDES A CESSION OF WORK, A REFUSAL TO WORK OR TO CONTINUE TO WORK BY EMPLOYEES IN COMBINATION OR IN CONCERT OR IN ACCORDANCE WITH A COMMON UNDERSTANDING, OR A SLOW-DOWN OR OTHER CONCERTED ACTIVITY ON THE PART OF EMPLOYEES DESIGNED TO RESTRICT OR LIMIT OUTPUT."

14. SECTION 54(1) OF THE ACT PROVIDES:

"WHERE A COLLECTIVE AGREEMENT IS IN OPERATION, NO EMPLOYEE BOUND BY THE AGREEMENT SHALL STRIKE AND NO EMPLOYER BOUND BY THE AGREEMENT SHALL LOCK OUT SUCH AN EMPLOYEE. R.S.O. 1960, c.202, s. 54(1)."

15. SECTION 55 SHOULD ALSO BE NOTED. IT PROVIDES:

"NO TRADE UNION OR COUNCIL OF TRADE UNIONS SHALL CALL OR AUTHORIZE, AND NO OFFICER, OFFICIAL OR AGENT OF A TRADE UNION OR COUNCIL OF TRADE UNIONS SHALL COUNSEL, PROCURE, SUPPORT OR ENCOURAGE AN UNLAWFUL STRIKE. R.S.O. 1960, c. 202, s. 55."

16. THE UNQUALIFIED PROHIBITION SET OUT IN SECTIONS 54(1) AND 55 OF THE ACT, IS EMPHASIZED IN SECTIONS 33 AND 34 OF THE ACT.

17. SECTION 33 DIRECTS THAT EVERY COLLECTIVE AGREEMENT IS TO PROVIDE THAT THERE WILL BE NO STRIKES OR LOCKOUTS DURING THE TERM OF THE AGREEMENT AND FOR THE ADDITION OF SUCH A CLAUSE TO AN AGREEMENT BY THE BOARD UPON APPLICATION BY EITHER PARTY. SECTION 34(1) PROVIDES THAT EVERY COLLECTIVE AGREEMENT MUST CONTAIN PROVISIONS FOR THE SETTLEMENT BY ARBITRATION OF ALL (EMPHASIS ADDED) DIFFERENCES WITHOUT STOPPAGE OF WORK.

18. THE COLLECTIVE AGREEMENT WITH WHICH WE ARE HERE CONCERNED CONTAINS A NO STRIKE, NO LOCKOUT (ARTICLE 18) AND AN ARBITRATION (ARTICLE 17) CLAUSE AS REQUIRED BY THE ACT. WE SET OUT THE STATUTORY REQUIREMENTS FOR COLLECTIVE AGREEMENTS AS WELL AS SECTIONS 54 AND 55 FOR WHAT MIGHT APPEAR TO BE THE SUPERFLUOUS PURPOSE OF DEMONSTRATING THE OBVIOUS AND REITERATED AIM OF THE LEGISLATION TO ENSURE THE FINAL AND BINDING SETTLEMENT OF DISPUTES ARISING DURING THE TERM OF A COLLECTIVE AGREEMENT WITHOUT WORK STOPPAGES CAUSED BY STRIKES OR LOCKOUTS.

19. IT APPEARS TO US THAT "THE RIGHT TO WITHDRAW" REFERRED TO IN ARTICLE 15.6 OF THE COLLECTIVE AGREEMENT IS CLEARLY SYNONYMOUS WITH "THE RIGHT TO STRIKE". THAT BEING SO, ARTICLE 15.6 IS IN CLEAR CONTRADICTION OF ARTICLES 17 AND 18 OF THE COLLECTIVE AGREEMENT ITSELF. WHAT IS OF GREATER SIGNIFICANCE, HOWEVER, IS THE FACT THAT THE ARTICLE FLIES SQUARELY IN THE TEETH OF SECTIONS 54 AND 55 OF THE LABOUR RELATIONS ACT. THESE SECTIONS SET OUT UNQUALIFIED PROHIBITIONS. THE ARTICLE APPEARS TO US TO EMBODY AN ATTEMPT BY THE PARTIES TO NEGOTIATE THEMSELVES OUT OF THE PROVISIONS OF THE LABOUR RELATIONS ACT AND TO MAKE A LAW TO THEMSELVES OUTSIDE ITS EVIDENT SCOPE AND INTENT. WE DO NOT THINK THE PARTIES ARE COMPETENT TO ENACT PRIVATE LEGISLATION WHICH WOULD PERMIT THAT WHICH THE LABOUR RELATIONS ACT PROHIBITS EVEN THOUGH, AT THE SAME TIME, THEY GIVE LIP SERVICE TO THE PROVISIONS OF THE ACT GOVERNING THE CONTENT OF COLLECTIVE AGREEMENTS.

20. WE FIND THE PROVISIONS OF ARTICLE 15.6 TO BE CONTRARY TO PURPOSE AND INTENT OF THE LABOUR RELATIONS ACT AS GENERALLY INDICATED BY THE SECTIONS PREVIOUSLY REFERRED AND IN PARTICULAR BY SECTIONS 54 AND 55 WHICH IT ATTEMPTS TO CIRCUMVENT AND RENDER NUGATORY INSOFAR AS THE PARTIES TO THE COLLECTIVE AGREEMENT ARE CONCERNED.

21. IT MAY, OF COURSE, BE ARGUED THAT SECTION 15.6 IS INTENDED SOLELY TO RELIEVE THE UNION AGAINST A CLAIM FOR DAMAGES IN THE EVENT OF ARBITRATION PROCEEDINGS ARISING OUT OF A WITHDRAWAL OF ITS MEMBERS FROM A WORK SITE IN THE CIRCUMSTANCES SET OUT IN 15.6. THIS, HOWEVER, DOES NOT WARRANT ABSOLUTION INSOFAR AS ITS CLEAR TRANSGRESSION AGAINST THE PROVISIONS OF THE LABOUR RELATIONS ACT IS CONCERNED SO AS TO MAKE IT AVAILABLE AS A DEFENCE TO AN ALLEGED VIOLATION OF THAT ACT WHEN AND IF THE NEED SHOULD ARISE.

22. IN OUR OPINION, THE CLAUSE IS INVALID AND CANNOT BE COUNTENANCED AS A DEFENCE TO A CHARGE INVOLVING ALLEGATIONS WITH RESPECT TO AN ILLEGAL STRIKE. IT CANNOT MAKE LAWFUL THAT WHICH THE STATUE STATES SO CLEARLY IS UNLAWFUL.

23. IN THE PRESENT INSTANCE, THE BOARD IS AWARE THAT THE RESPONDENTS COMPRIZE ONLY EMPLOYEES OF THE APPLICANT. IT ALSO NOTES THAT THE APPLICANT IS A CO-AUTHOR OF THE INVALID ARTICLE IN THE COLLECTIVE AGREEMENT THAT THE EMPLOYEES WERE CALLED OFF THE JOB BY THE UNION, THE OTHER DIRECT PARTY TO THE AGREEMENT, PURPORTEDLY UNDER THE PROTECTION OF THE ARTICLE IN QUESTION. THESE CIRCUMSTANCES MIGHT WELL BE FOUND TO BE SUFFICIENTLY EXCULPATORY TO PERSUADE THE BOARD TO DECLINE TO GRANT CONSENT TO PROSECUTE THE EMPLOYEES FOR PARTICIPATION IN AN ILLEGAL STRIKE ON AN INITIAL APPLICATION. A DECLARATION SUCH AS IS SOUGHT IN THE PRESENT INSTANCE IS NOT, HOWEVER, PUNITIVE BUT RATHER INFORMATIVE IN NATURE (FALCONBRIDGE NICKEL MINES LTD. 60 CLLC ¶ 16-180). THAT BEING SO, THE CIRCUMSTANCES REFERRED TO

IMMEDIATELY ABOVE HAVE, IN THE PRESENT CONTEXT, LESS SIGNIFICANCE THAN THEY MIGHT HAVE IN A PROSECUTION APPLICATION.

24. IN THE COURSE OF DEALING WITH THIS MATTER, THE BOARD HAS CONSIDERED THE ELLIS DON LIMITED CASE, OLRB MONTHLY REPORT MAY 1968, P. 197. IT IS EVIDENT, HOWEVER, THAT THE BOARD IN THAT INSTANCE DID NOT FEEL IT NECESSARY TO DEAL DIRECTLY WITH THE ISSUE OF THE VALIDITY OF THE CONTRACT CLAUSE REFERRED TO THEREIN, AND THAT THE DECISION WAS APPARENTLY INFLUENCED BY PERSUASIVE FACTORS WHICH ARE NOT PRESENT IN THE CASE BEFORE THIS BOARD.

25. IN THE LIGHT OF ALL OF THE FOREGOING, THE BOARD DECLARES THAT THE WORK STOPPAGE ENGAGED IN BY THE RESPONDENTS WHICH COMMENCED ON MAY 21, 1969 AND CONTINUED UP TO THE HEARING OF THIS MATTER, CONSTITUTES AN UNLAWFUL STRIKE CONTRARY TO THE LABOUR RELATIONS ACT.

26. BOARD MEMBER E. BOYER DISSENTS FROM THE DECISION OF THE MAJORITY WITH REASONS TO FOLLOW.

INDEXED ENDORSEMENTS - PROSECUTION

15963-69-U: FRASER-BRACE ENGINEERING COMPANY LIMITED (APPLICANT)
V. PAUL EMILE ALBERT ET AL (RESPONDENTS).

BEFORE: O. B. SHIME VICE-CHAIRMAN AND BOARD MEMBERS
P. J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: A. J. CLARK, D. H. STEVENS
FOR THE APPLICANT; JIM TYE FOR THE RESPONDENTS.

DECISION OF O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBER
J.E.C. ROBINSON: JUNE 3, 1969.

1. THIS IS AN APPLICATION FOR CONSENT TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENTS FOR AN OFFENCE ALLEGED TO HAVE BEEN COMMITTED PURSUANT TO S. 54 OF THE LABOUR RELATIONS ACT.

2. IT APPEARS THAT THE FOLLOWING PERSONS WERE NOT SERVED WITH NOTICE OF THE HEARING:

MAURICE LAURIN
MAURICE GUERETTE
KENNETH GLEN SCHROEDER
WILLIAM R. NICHOLSON
HECTOR MAURICE
RAYMOND MAURICE.

HOWEVER, A REPLY WAS FILED AND AT THE BOTTOM OF THE REPLY IN THE PLACE OF THE SIGNATURE FOR THE RESPONDENTS WAS SIGNED AS FOLLOWS:-

"ACTING FOR RESPONDENTS JAMES TYE."

ATTACHED TO THE REPLY WAS A LIST CONTAINING NAMES OF ALL THE RESPONDENTS AND AT THE HEARING IT APPEARED THAT MR. TYE WAS REPRESENTING ALL THE RESPONDENTS HEREIN. IN ADDITION, THE BOARD NOTES THAT THE INDIVIDUALS CONCERNED WERE MEMBERS OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 786, AND THAT MR. TYE IS A REPRESENTATIVE OF THAT UNION. IN THE CIRCUMSTANCES WE ARE SATISFIED THAT THE AFORESAID RESPONDENTS HAVE WAIVED ANY DEFECT OR IRREGULARITY IN THE SERVING OF NOTICE.

3. HAVING REGARD ALL THE EVIDENCE ADDUCED THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION THAT THE HEREINAFTER NAMED PERSONS DID STRIKE CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT, R.S.O. 1960, c. 202 s. 54 AS AMENDED BY 1961-65, c. 68; 1962-63, c. 70; 1964, c. 53 AND 1966, c. 76:

LEO ROY	RAYMOND MAURICE	WILBROD JOSEPH BRAZEAU
ROD FAUBERT	CLAUDE ROY	ROGER GASTON BEAUCHAMP
ALBERT M. THERIAULT	AURELIEN HORTH	MAURICE LAURIN
GERARD MALLET	RAYMOND LANGLOIS	NORMAND ROBICHAUD
ISADORE VIGLIAROLO	CLAUDE CORRIEVEAU	CHARLES CAISSY
ROYAL PAQUETTE	ALPHONSE HORTH	FERNAND EDMUND LIARD
ROGER BOUDREAU	ROLAND DUBEAU	DENIS BOURGEOIS
ARTHUR MORSETTE	JOHN S. POWERS	FRANCIS LAJEUNESSE
HECTOR THOMAS DALLAIRE	WILLIAM R. NICHOLSON	RONALD JOLY
HECTOR MAURICE	MAURICE GUERETTE	KENNETH GLEN SCHROEDER
EUGENE RIVET	RAYMOND CHABOYER	DANIEL MAURICE

4. THE APPROPRIATE DOCUMENTS WILL ISSUE.

DECISION OF BOARD MEMBER P. J. O'KEEFFE: JUNE 3, 1969.

I DISSENT FROM THAT PART OF THE MAJORITY DECISION WHICH CONSENTS TO THE INSTITUTION OF A PROSECUTION FOR THE SIX NAMED PERSONS WHO WERE NOT SERVED WITH NOTICE OF THE HEARING. SURELY IT IS BASIC TO OUR SENSE OF JUSTICE THAT AN ACCUSED MUST HAVE NOTICE OF HIS ALLEGED WRONGDOING AND THEREFORE HAVE AN OPPORTUNITY TO MAKE ARRANGEMENTS FOR HIS DEFENCE BY PERSONAL APPEARANCE OR THROUGH COUNSEL OF HIS CHOICE. IT IS BASIC TO OUR JUDICIAL PROCESSES THAT AN ACCUSED WILL BE GIVEN THE OPPORTUNITY TO FACE HIS ACCUSERS IN ANY JUDICIAL OR QUASI JUDICIAL PROCEEDING MORE PARTICULARLY WHEN THE ALLEGED OFFENCE IS OF A QUASI CRIMINAL CHARACTER.

THE SIX ACCUSED PERSONS IN THE INSTANT CASE WERE NOT SERVED WITH NOTICE OF THEIR ALLEGED OFFENCE OR WITH DETAILS OF THE BOARD'S HEARING INTO SUCH ALLEGATIONS. AT THE HEARING IN THIS MATTER NO COUNSEL CAME FORWARD CLAIMING TO REPRESENT THE SIX ACCUSED.

I AM NOT SATISFIED THAT THE CAUSE OF NATURAL JUSTICE IS SERVED BY ASSUMING THAT THE SIX PERSONS INVOLVED WERE REPRESENTED AT THE HEARING BECAUSE THE REPLY OF MR. JAMES TYE INCLUDED THE WORDS "ACTING FOR RESPONDENTS JAMES TYE."

THERE IS NO EVIDENCE WHATSOEVER THAT WOULD LEAD ME TO THE CONCLUSION THAT THE SIX PERSONS INVOLVED HAVE WAIVED ANY DEFECT IRREGULARITY IN THE SERVING OF THE NOTICE, ON THE CONTRARY IN ALL OF THE CIRCUMSTANCES OF THIS MATTER I CAN ONLY CONCLUDE THAT THE SIX PERSONS CONCERNED WERE DENIED AN OPPORTUNITY TO DEFEND THEMSELVES IN THIS PROCEEDING. I THEREFORE WOULD NOT GRANT CONSENT TO INSTITUTE A PROSECUTION AGAINST MAURICE LAURIN, MAURICE GUERETTE, KENNETH GLEN SCHROEDER, WILLIAM R. NICHOLSON, HECTOR MAURICE AND RAYMOND MAURICE.

15972-69-U: THE BRICKLAYERS, MASONS AND TILESETTERS' UNION LOCAL No. 2 ONTARIO (AFFILIATED WITH THE BRICKLAYERS, MASONS, PLASTERERS INTERNATIONAL UNION OF AMERICA) FORMERLY CALLED THE BRICKLAYERS' UNION No. 2) (APPLICANT) v. TORONTO CONSTRUCTION ASSOCIATION AND MEMBERS AS APPEARING ON THE ATTACHED LIST (RESPONDENTS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: R. KOSKIE AND J. ZANUSSI FOR THE APPLICANT; B. W. BINNING AND F. R. VON VEH FOR THE RESPONDENTS.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER H.F. IRWIN: JUNE 27, 1969.

• • •

2. THIS IS AN APPLICATION FOR CONSENT TO PROSECUTE THE RESPONDENTS FOR AN OFFENCE UNDER THE LABOUR RELATIONS ACT. THE APPLICANT ALLEGES THAT THE RESPONDENTS FAILED TO BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT, CONTRARY TO SECTION 12 OF THE LABOUR RELATIONS ACT.

3. THE REPRESENTATIVES OF THE PARTIES MET AND BARGAINED ON FEBRUARY THE 20TH, MARCH THE 3RD AND 10TH, 1969.

4. THE MEETING OF FEBRUARY THE 20TH RAN FROM 9.30 A.M. TO 1.30 P.M. DURING THE EARLIER PART OF THE MEETING, THE REPRESENTATIVE OF THE RESPONDENTS STATED THAT HIS COMMITTEE HAD AUTHORITY TO SIGN A MEMORANDUM OF UNDERSTANDING, BUT THAT IT WOULD HAVE TO BE RATIFIED BY THE MEMBERS OF THE TORONTO CONSTRUCTION ASSOCIATION. HE SAID THAT 19 TRADES WERE BARGAINING AND THE INTENT WAS TO SIGN ALL TRADES AT ONCE. HE INDICATED THAT ALL AGREEMENTS WOULD HAVE TO BE RATIFIED AT THE SAME TIME OR NONE WOULD BE RATIFIED. TOWARDS THE END OF THE MEETING, THE SPOKESMAN FOR THE RESPONDENTS SAID THAT THERE WOULD BE NO WORK AFTER MAY THE 1ST IF THE 19 CONTRACTORS WERE NOT RATIFIED. THE PARTIES THEN AGREED TO MEET AGAIN ON MARCH THE 3RD, 1969.

5. AT THE COMMENCEMENT OF THE MEETING HELD ON MARCH THE 3RD, THE SPOKESMAN FOR THE APPLICANT STATED THAT THE RELATIONSHIP BETWEEN THE PARTIES COULD BE JEOPARDIZED BY THE RESPONDENT'S ATTITUDE THAT NO AGREEMENT WOULD BE SIGNED WITH THE APPLICANT UNTIL ALL TRADES WERE IN AGREEMENT. THE RESPONDENTS APPARENTLY MADE NO REPLY TO THESE REMARKS AND THE PARTIES COMMENCED TO BARGAIN WITH RESPECT TO PENSIONS AND OTHER MATTERS. THIS MEETING RAN FROM 9.30 A.M. UNTIL ADJOURNED AT 2.40 P.M.

6. BARGAINING WAS RENEWED AGAIN ON MARCH THE 10TH, 1969. THE SESSION COMMENCED AT 9.35 A.M. AND CONCLUDED AT 5.00 P.M. A REFERENCE WAS MADE BY THE APPLICANT TO THE FACT THAT THE RESPONDENTS WERE SEEKING CONCILIATION SERVICES WITHOUT FIRST SUBMITTING COUNTER-PROPOSALS ON WAGES AND HOURS. TO THIS THE RESPONDENTS REPLIED THAT THEY WERE TRYING TO GET ALL TRADES INTO AGREEMENTS TOGETHER - THAT THERE WAS A MOVE TO GET EVERY ONE IN STEP TOGETHER OR "WE COULD LOCK THE GATE". THE APPLICANT OFFERED TO MEET AGAIN ON MARCH THE 18TH, PROVIDED THE RESPONDENTS WOULD FORGET ABOUT CONCILIATION.

7. THE JOINT REVIEW BOARD OF THE TORONTO BUILDING & CONSTRUCTION TRADES COUNCIL, OF WHICH THE APPLICANT IS A MEMBER, AND THE LABOUR RELATIONS COMMITTEE OF TORONTO CONSTRUCTION ASSOCIATION ISSUED A MEMORANDUM DATED MARCH 3RD, 1969, ADDRESSED TO ALL EMPLOYER AND UNION NEGOTIATING COMMITTEES IN THE CONSTRUCTION INDUSTRY, TORONTO AREA. THE TEXT OF THE MEMORANDUM IS AS FOLLOWS:

"IN VIEW OF THE REPORTS AND MANY RECOMMENDATIONS THAT HAVE BEEN MADE BY THE COMMISSIONS AND INQUIRIES INTO LABOUR RELATIONS, PARTICULARLY IN THE CONSTRUCTION INDUSTRY, IN THE PAST YEAR OR TWO, HOW WE CONDUCT OUR NEGOTIATIONS THIS YEAR WILL DECIDE WHETHER THE GOVERNMENT WILL IMPOSE RESTRICTIVE LEGISLATION ON US. THIS, WE ARE SURE, NONE OF US WANT!"

"PERHAPS IT WOULD BE ADVISABLE TO CALL TO YOUR ATTENTION A PART OF THE PRESS RELEASE BY US ON AUGUST 16, 1968:

"AN ANNOUNCEMENT TODAY SET OUT A THREE-POINT AGREEMENT THAT BOTH SIDES SAY THEY HOPEFULLY ADOPTED IN AN EFFORT TO HEAD OFF A LAST-MINUTE CONFRONTATION OVER CONTRACTS, OR A REPEAT PERFORMANCE OF THE DISPUTE IN 1967 WHICH CRIPPLIED ALL MAJOR BUILDING IN THE TORONTO DISTRICT FOR 26 WEEKS.

"THE AGREEMENT COVERS THESE POINTS: (1) NEGOTIATIONS FOR ALL COLLECTIVE AGREEMENTS (EXPIRING APRIL 30, 1969) TO COMMENCE SEPTEMBER 1, 1968; (2) NEGOTIATIONS TO BE COMPLETED ON ALL INDIVIDUAL TRADE MATTERS BY MARCH 1, 1969; (3) NEGOTIATIONS ON GENERAL MATTERS SUCH AS WAGES, HOURS OF WORK TO BE CARRIED ON WITH THE ASSISTANCE OF A JOINT REVIEW BOARD IF DEEMED NECESSARY OR IF REQUESTED, COMPOSED OF FOUR MEMBERS FROM THE LABOUR RELATIONS COUNCIL AND FOUR FROM THE TORONTO BUILDING & CONSTRUCTION TRADES COUNCIL."

"THE THREE-POINT AGREEMENT WAS EVOLVED TO HELP US MAKE; A SINCERE EFFORT TO PUT OUR OWN HOUSE IN ORDER AND TO SOLVE OUR OWN PROBLEMS".

"NOW THAT MARCH FIRST HAS PASSED, THE DATE ON WHICH NEGOTIATIONS ON INDIVIDUAL TRADE MATTERS SHOULD HAVE BEEN COMPLETED, YOU ARE URGED TO COMPLETE YOUR NEGOTIATIONS AS QUICKLY AS POSSIBLE. IF YOU ARE UNABLE TO DO SO, THE EMPLOYER REPRESENTATIVES SHOULD ADVISE THE LABOUR RELATIONS COUNCIL AS TO THE REASONS FOR THE DELAY AND THE UNION REPRESENTATIVES SHOULD ADVISE THE TORONTO BUILDING & CONSTRUCTION TRADES COUNCIL AS TO THEIR REASONS FOR THE DELAY. IN ALL CASES WHERE AGREEMENT HAS NOT BEEN REACHED BY MARCH 18, CONCILIATION WILL BE APPLIED FOR AT THAT TIME, SO THAT CONCILIATION PROCEDURES FOR ALL APPLICABLE GROUPS WILL HAVE BEEN COMPLETED BY APRIL 30.

"AGAIN IT IS EMPHASIZED, THE REVIEW BOARD, COMPOSED OF FOUR MEMBERS FROM THE LABOUR RELATIONS COUNCIL AND FOUR FROM THE TORONTO BUILDING & CONSTRUCTION TRADES COUNCIL, IS AVAILABLE TO YOU TO ASSIST IN PROBLEM AREAS UPON YOUR REQUEST.

"TO AVOID A DRASTIC DISLOCATION IN THE INDUSTRY, ALL NEGOTIATING GROUPS WERE URGED TO HAVE NEGOTIATIONS COMPLETED AND TO HAVE THEIR INDIVIDUAL COLLECTIVE AGREEMENTS READY FOR SIGNING ON OR BEFORE THEIR EXPIRY DATE OF APRIL 30. IT HAS BEEN REPORTED SOME GROUPS ARE STALLING AND WILL NOT BE IN A POSITION TO MEET THE DEADLINES OF MARCH 18 AND APRIL 30.

IF YOU ARE ONE OF THESE GROUPS, IT IS REQUESTED THAT YOU MAKE EVERY EFFORT TO SPEED UP YOUR NEGOTIATIONS SO ALL GROUPS WILL MEET TARGET DATES OF MARCH 18 AND APRIL 30 AND PROVE CONCLUSIVELY TO THE GOVERNMENT THAT WE HAVE RESPONSIBLE PARTIES IN OUR INDUSTRY AND DO NOT NEED COERCIVE LEGISLATION FOR THE SETTLEMENT OF OUR COLLECTIVE AGREEMENTS.

FOR THE
LABOUR RELATIONS COUNCIL:

FOR THE
TORONTO BUILDING & CONSTRUCTION
TRADES COUNCIL:

"SIGNATURE"
W. GIBSON, CHAIRMAN.

"SIGNATURE"
ALEXANDER MAIN, BUSINESS MANAGER."

8. THERE WERE NO FURTHER DIRECT NEGOTIATIONS HELD BETWEEN THE PARTIES. IT WAS CLEAR, HOWEVER, THAT CONCILIATION SERVICES WERE GRANTED AND THAT MEETINGS TOOK PLACE WITH THE CONCILIATION OFFICER APPOINTED UNDER THE LABOUR RELATIONS ACT. THE CONCILIATION PROCESS HAD NOT BEEN CONCLUDED AT THE DATE OF THE HEARING OF THIS APPLICATION.

9. HAVING REGARD TO THE PARTICULAR CIRCUMSTANCES OUTLINED ABOVE THE BOARD, IN THE EXERCISE OF ITS DISCRETION, DECLINES TO GRANT CONSENT TO PROSECUTE AND THE APPLICATION IS DISMISSED.

DECISION OF BOARD MEMBER P. J. O'KEEFFE: JUNE 27, 1969.

ON THE BASIS OF ALL OF THE EVIDENCE IN THIS PROCEEDING, I WOULD CONSENT TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENTS FOR ALLEGEDLY FAILING TO BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT CONTRARY TO SECTION 12 OF THE LABOUR RELATIONS ACT.

16111-69-U: KAZY KARPAS AND LILLIE KARPAS, CARRYING ON BUSINESS UNDER THE NAME AND STYLE OF CENTRAL HOTEL (APPLICANT) V. RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL-CIO-CLC LOCAL 448 AND PETER KOLBASKA, GEORGE DURHAM, JOHN HENSEN AND EDWIN FOX (RESPONDENTS).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: SAMUEL LERNER, Q.C., MISS JANET STEWART, GEORGE HOLMES FOR THE APPLICANT; DONALD G. COLLINS, PETER KOLBASKA FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 16, 1969.

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST THE RESPONDENTS FOR VARIOUS ACTS COMMITTED IN CONTRAVENTION OF S. 52 OF THE LABOUR RELATIONS ACT.
2. THE APPLICANT ALLEGED THAT "ON APRIL 12, 1969 A PATRON OF THE APPLICANT WAS PREVENTED BY A REPRESENTATIVE OF THE UNION FROM ENTERING THE APPLICANT'S PREMISES WHERE HE INTENDED TO PARTAKE OF SOME REFRESHMENT. THIS CONDUCT CONSTITUTES INTERFERENCE IN THE BUSINESS OF THE APPLICANT."
3. EVEN ASSUMING THAT SUCH CONDUCT CONSTITUTED AN OFFENCE THE WITNESS CALLED BY THE APPLICANT INDICATED THAT HE COULD NOT IDENTIFY THE PERSON WHO SPOKE TO HIM, AND IN ANY EVENT HE WAS NOT PREVENTED FROM ENTERING THE PREMISES. ACCORDINGLY THE APPLICATION IN THAT REGARD IS DISMISSED.
4. ANOTHER ALLEGATION CONCERNED A STRIKE VOTE WHICH WAS TAKEN PRIOR TO THE EMPLOYEES GOING ON STRIKE. HAVING REGARD TO THE EVIDENCE WE FIND THAT THERE IS NO EVIDENCE WHICH WOULD INDICATE A VIOLATION OF S. 52 IN THE TAKING OF THE STRIKE VOTE AND ACCORDINGLY, THE APPLICATION IN THAT REGARD IS DISMISSED.
5. THE APPLICATION THEREFORE, WITH RESPECT TO RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL-CIO-CLC LOCAL 448 AND PETER KOLBASKA, JOHN HENSEN AND EDWIN FOX IS DISMISSED.
6. THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST GEORGE DURHAM FOR ALLEGEDLY VIOLATING S. 52 OF THE LABOUR RELATIONS ACT IN THAT ON APRIL 9, 1969 HE APPROACHED THE HUSBAND OF A WAITRESS WHO WAS EMPLOYED AT CENTRAL HOTEL, LUCAN, AND INFORMED THAT IF HE, AND MORE PARTICULARLY HIS WIFE, CROSSED THE PICKET LINE IN FRONT OF THE CENTRAL HOTEL AND IF HIS WIFE CONTINUED TO WORK AT THE CENTRAL HOTEL, THEY WOULD ADVISE HIS UNION REPRESENTATIVE AT HIS PLACE OF EMPLOYMENT, AND IF THEY DID ADVISE HIS UNION REPRESENTATIVE, THE HUSBAND WOULD FIND IT IMPOSSIBLE TO JOIN THE LOCAL AT HIS PLACE OF EMPLOYMENT AND WOULD THEREFORE LOSE HIS JOB.

INDEXED ENDORSEMENTS - SECTION 65

15845-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. SAMTEIT STORE FIXTURES & REFRIGERATION LIMITED (RESPONDENT).

15857-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v.
SAMTEIT STORE FIXTURES & REFRIGERATION LIMITED (RESPONDENT).

- AND -

15864-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v.
SAMTEIT STORE FIXTURES & REFRIGERATION LIMITED (RESPONDENT).

- AND -

15885-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v.
SAMTEIT STORE FIXTURES & REFRIGERATION LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
P. J. O'KEEFFE AND J.E. C. ROBINSON.

APPEARANCES AT THE HEARING: LORNE INGLE AND FORTUNATO RAO FOR
THE COMPLAINANT, W. G. PHELPS AND FRANK SZABO FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 10, 1969.

• • •

2. THE COMPLAINT WITH RESPECT OF ANTONIO STOLFA, FRANCESCO MANTINI, MICHELE MORETTI AND GIOVANNI DAMICO IS WITHDRAWN AT THE REQUEST OF THE COMPLAINANT WITH THE CONSENT OF THE RESPONDENT BY LEAVE OF THE BOARD.

3. THE COMPLAINANT HAS COMPLAINED THAT THE AGGRIEVED PERSONS, CECIL CROUGH, ALEX SANTOTO, ANGELO PACE, DOMINCO DEVINCENZIS, NICK TANTSES, WALTER SALTYNS AND JAMES CUNNINGHAM, WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50(A) OF THE LABOUR RELATIONS ACT.

4. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT CECIL CROUGH, ALEX SANTORO, ANGELO PACE, DOMINCO DEVINCENZIS, NICK TANTSES, WALTER SALTYNS AND JAMES CUNNINGHAM WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50(A) OF THE LABOUR RELATIONS ACT IN THAT THE RESPONDENT REFUSED TO CONTINUE TO EMPLOY THE AGGRIEVED PERSONS BECAUSE THE AGGRIEVED PERSONS WERE MEMBERS OF THE COMPLAINANT UNION.

5. THE BOARD DETERMINES THAT:

(a) ALEX SANTORO, ANGELO PACE, DOMINCO DEVINCENZIS, NICK TANTSES, WALTER SALTYNS AND JAMES CUNNINGHAM BE REINSTATED FORTHWITH IN THE POSITIONS HELD BY THEM AT THE TIME OF THEIR DISCHARGE;

(b) THAT THE RESPONDENT PAY TO:
CECIL CROUGH THE SUM OF \$249.00
ALEX SANTORO THE SUM OF \$250.00

ANGELO PACE	THE SUM OF \$ 56.00
DOMINICO DEVINCENZIS	THE SUM OF \$218.00
NICK TANTSES	THE SUM OF \$ 41.00
WALTER SALTYS	THE SUM OF \$240.00
JAMES CUNNINGHAM	THE SUM OF \$529.00

FORTHWITH AS FULL COMPENSATION FOR LOSS OF EARNINGS
AND OTHER EMPLOYMENT BENEFITS SUSTAINED BY THEM
AS A RESULT OF THEIR HAVING BEEN DEALT WITH BY
THE RESPONDENT CONTRARY TO THE PROVISIONS OF
SECTION 50(A) OF THE LABOUR RELATIONS ACT.

DECISION OF BOARD MEMBER J.E.C. ROBINSON: JUNE 10, 1969.

I DISSENT FROM THAT PORTION OF THE MAJORITY DECISION
DEALING WITH DOMINICO DEVINCENZIS AND WALTER SALTYS. I WOULD
FIND ON THE EVIDENCE BEFORE THE BOARD THAT THE COMPLAINANT HAS
FAILED TO ESTABLISH THAT DOMINICO DEVINCENZIS AND WALTER SALTYS
WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF
SECTION 50(A) OF THE LABOUR RELATIONS ACT AND I WOULD HAVE DIS-
MISSED THE COMPLAINT WITH RESPECT TO DOMINICO DEVINCENZIS AND
WALTER SALTYS.

16079-69-U: LOCAL 280 OF THE HOTEL AND RESTAURANT EMPLOYEES' AND
BARTENDERS' INTERNATIONAL UNION (COMPLAINANT) v. THE SAVARIN LIMITED
(RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: IAN G. SCOTT AND FRANK CORTESE
FOR THE COMPLAINANT, JOHN GRUDEFF FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 3, 1969.

1. THIS IS A COMPLAINT FOR RELIEF UNDER SECTION 65 OF THE
LABOUR RELATIONS ACT. THE AGGRIEVED PERSON, WILLIAM LAWRENCE WILLS,
HAD BEEN EMPLOYED BY THE RESPONDENT FOR 13 YEARS AS A WAITER. UP
UNTIL THE EVENTS IN QUESTION, THERE HAD BEEN NO COMPLAINT ABOUT MR.
WILLS' CONDUCT OR THE MANNER IN WHICH HE PERFORMED HIS WORK. ON OR
ABOUT TUESDAY, APRIL 22ND, 1969, APPROXIMATELY ONE HOUR AFTER THE
GRIEVOR COMMENCED HIS SHIFT, HE WAS ADVISED BY MR. COOPE, THE RES-
PONDENT'S NIGHT MANAGER, THAT HE WAS LAID OFF FOR THIRTY DAYS.

2. THE COMPLAINANT UNION HAD BEEN CERTIFIED AS BARGAINING
AGENT FOR THE RESPONDENT'S WAITERS AND BARTENDERS IN THE LATTER
PART OF MARCH 1969. AT THE TIME THE APPLICATION FOR CERTIFICATION
WAS MADE, MR. ASSAF, THE PRESIDENT OF THE RESPONDENT, WAS ON VACATION.

ON HIS RETURN, MR. ASSAF CALLED A MEETING OF THE WAITERS AND BARTENDERS DURING WORKING HOURS AND ADVISED THE EMPLOYEES THAT THERE WAS NO WAY THAT HE WAS GOING TO ALLOW THE UNION TO COME INTO THE SAVARIN. MR. ASSAF THREATENED TO CLOSE THE SAVARIN TAVERN IF THE UNION WAS CERTIFIED.

3. ON MARCH 24, 1969, SHORTLY BEFORE THE CERTIFICATION HEARING, MR. ASSAF CAUSED THE FOLLOWING NOTICE TO BE POSTED:

NOTICE TO ALL EMPLOYEES IN THE LOUNGE

BALLOTS WILL BE ISSUED TO-DAY TO ALL WAITERS, BARTENDERS AND BARBOYS OF THE SAVARIN LIMITED SO THAT THEY MAY SIGNIFY THEIR INTENTIONS OF EITHER REMAINING IN LOCAL 280 OR WITHDRAWING FROM SAME.

A SEALED BALLOT BOX WILL BE PLACED IN EMIL'S OFFICE TO RECEIVE THE BALLOTS. IT WILL REMAIN THERE UNTIL TUESDAY EVENING (MARCH 25/69) AT WHICH TIME IT WILL BE OPENED AND THE BALLOTS BE COUNTED.

ANYONE WISHING TO WITHDRAW FROM THE UNION WILL SIGN HIS BALLOT WITH HIS ORDINARY SIGNATURE, FOLD AND DEPOSIT IN THE BALLOT BOX. THOSE DESIRING TO REMAIN IN THE UNION WILL DEPOSIT THEIR BALLOTS IN THE BOX UNSIGNED. THUS, NO OTHER PERSON WILL KNOW HOW YOU HAVE VOTED.

IF, WHEN THE BALLOTS ARE COUNTED, IT IS FOUND THAT A MAJORITY FAVORS WITHDRAWAL FROM THE UNION, THE SIGNED BALLOTS WILL BE PRESENTED TO THE LABOR RELATIONS BOARD AS EVIDENCE TO THIS EFFECT. IF OTHERWISE ALL BALLOTS WILL BE DESTROYED AT ONCE.

SHOULD THE MAJORITY PREFER WITHDRAWAL FROM THE UNION, THERE WILL BE AN IMMEDIATE GENERAL INCREASE IN PAY. LATER, WHEN THE NEGOTIATIONS CARRIED ON BY THE HOTELMEN'S ASSOC. ARE COMPLETED, THERE WILL BE A FURTHER REVISION.

"EDWARD ASSAF,"
PRESIDENT.

4. IN SPITE OF MR. ASSAF'S EFFORTS, HOWEVER, THE COMPLAINANT UNION WAS CERTIFIED AS BARGAINING AGENT FOR THE WAITERS AND BARTENDERS OF THE RESPONDENT. MR. WILLS HAD BEEN THE PRIME MOVER IN

CAUSING THE RESPONDENT'S EMPLOYEES TO JOIN THE COMPLAINANT UNION. ON TUESDAY, APRIL 22ND, APPROXIMATELY ONE HOUR AFTER MR. WILLS COMMENCED WORK, HE SAW MR. ASSAF GIVING ORDERS TO MR. COOPE.

5. THE NEXT TIME MR. WILLS SAW MR. COOPE, HE NOTICED THAT MR. COOPE WAS DISTURBED AND HE ASKED MR. COOPE WHAT WAS WRONG. MR. COOPE ADVISED MR. WILLS THAT, "ASSAF HAS GIVEN ME A JOB I DON'T WANT -- I HAVE TO LAY YOU OFF FOR THIRTY DAYS." WHEN ASKED THE REASON FOR THE LAY-OFF, MR. COOPE ADVISED MR. WILLS THAT MR. ASSAF SAID THAT THE GRIEVOR HAD BEEN VERY ABRUPT WITH MR. ASSAF ON THE PREVIOUS SATURDAY. WHEN THE GRIEVOR SUGGESTED THAT PERHAPS HE SHOULD APOLOGIZE TO MR. ASSAF, MR. COOPE ADVISED HIM NOT TO GO NEAR MR. ASSAF AND THAT MR. ASSAF HAD TOLD MR. COOPE NOT TO LET ON THAT THE ORDER FOR THE THIRTY DAY LAY-OFF HAD COME FROM MR. ASSAF. APPARENTLY, MR. COOPE WAS VERY UPSET AND DIDN'T WANT THE GRIEVOR TO HOLD THE LAY-OFF AGAINST HIM BECAUSE IT WAS NOT HIS FAULT.

6. WHEN MR. WILLS RETURNED TO WORK THE FOLLOWING DAY TO SPEAK TO MR. ASSAF, MR. ASSAF ADVISED MR. WILLS THAT THE LAY-OFF WAS MR. COOPE'S IDEA AND THAT HE HAD TO STAND BEHIND HIS MANAGER.

7. ON TUESDAY, MAY 20TH, THREE DAYS PRIOR TO THE HEARING IN THIS MATTER, MR. WILLS RETURNED TO WORK FOLLOWING THE END OF THE THIRTY DAY SUSPENSION. MR. ASSAF ADVISED HIM THAT HE WOULD NOT PERMIT HIM TO RETURN TO WORK UNTIL AFTER THE INSTANT CASE HAD BEEN DEALT WITH BY THE BOARD. MR. ASSAF WOULD NOT COMMIT HIMSELF AS TO WHETHER OR NOT HE WOULD PERMIT THE GRIEVOR'S RETURN FOLLOWING THE HEARING IN THIS MATTER. WHEN THE GRIEVOR ASKED MR. ASSAF, "WHY ARE YOU DOING THIS TO ME," THE GRIEVOR TESTIFIED THAT MR. ASSAF REPLIED, "I KNOW YOU GOT THE UNION IN HERE."

8. AT THE HEARING, MR. COOPE TESTIFIED THAT ON SATURDAY, APRIL 19TH, A CUSTOMER VIGOROUSLY COMPLAINED ABOUT THE SERVICE GIVEN BY MR. WILLS AND THAT THIS COMPLAINT WAS THE CAUSE OF THE LAY-OFF. MR. COOPE, HOWEVER, TESTIFIED THAT UP UNTIL THE COMPLAINT IN QUESTION HE HAD NOTHING AGAINST MR. WILLS AND FOUND HIM TO BE A GOOD AND RELIABLE WAITER. WHEN THE COMPLAINT WAS MADE AGAINST MR. WILLS ON SATURDAY, APRIL 19TH, MR. COOPE TESTIFIED THAT THE CUSTOMER HAD "GRABBED HIM AND PUSHED HIM UP AGAINST THE SHOWCASE IN THE LOBBY AND PUSHED HIM AROUND." THE CUSTOMER APPARENTLY COMPLAINED THAT MR. WILLS WAS "AGGRESSIVE AND RUDE". HOWEVER, FOLLOWING THE DISCUSSION WITH THE CUSTOMER, MR. COOPE DID NOT BRING THE MATTER TO MR. WILLS' ATTENTION ON SATURDAY EVENING. APPARENTLY, AFTER THE TAVERN WAS CLOSED ON SATURDAY EVENING, MR. WILLS DROVE MR. COOPE HOME WHICH WAS A PRACTICE HE OFTEN FOLLOWED. MR. COOPE DID NOT MENTION THE CUSTOMER'S COMPLAINT DURING THE DRIVE HOME.

9. MR. COOPE TESTIFIED, HOWEVER, THAT MR. ASSAF HAD BEEN PRESENT IN THE LOBBY DURING MR. COOPE'S DISCUSSION WITH THE CUSTOMER.

10. MR. ASSAF TESTIFIED THAT MR. COOPE CAME INTO WORK ON TUESDAY AND EXPLAINED TO MR. ASSAF THAT HE WAS WORRIED. ACCORDING TO MR. ASSAF, MR. COOPE WAS CONCERNED ABOUT THE COMPLAINT THAT HAD BEEN MADE ON SATURDAY EVENING. MR. ASSAF FURTHER TESTIFIED THAT MR. COOPE SUGGESTED THAT MR. WILLS BE LAID OFF FOR TWO WEEKS. MR. ASSAF DID NOT AGREE WITH THE TWO WEEK PERIOD AND SUGGESTED THAT THE LAY-OFF BE FOR A PERIOD OF THIRTY DAYS. THE REASON MR. ASSAF SUGGESTED THE THIRTY DAY PERIOD OF LAY-OFF WAS THAT HE "WOULD BE DERELICT IN HIS DUTIES IF HE OVERLOOKED SUCH COMPLAINTS." MR. ASSAF ACKNOWLEDGED THAT HE KNEW THROUGH THE "GRAPEVINE" THAT MR. WILLS WAS ONE OF THE RINGLEADERS WHO BROUGHT IN THE UNION.

11. THE RESPONDENT CALLED TWO OTHER WITNESSES WHO TESTIFIED THAT COMPLAINTS HAD BEEN MADE ABOUT MR. WILLS' CONDUCT IN JANUARY 1969. IT WAS AGREED, HOWEVER, THAT NO MENTION HAD BEEN MADE OF THESE COMPLAINTS TO MR. WILLS AT ANY TIME. AT NO TIME PRIOR TO THE LAY-OFF WAS MR. WILLS ASKED TO EXPLAIN HIS CONDUCT WHICH GAVE RISE TO THE COMPLAINT ON THE PREVIOUS SATURDAY.

12. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, WE FIND THAT MR. ASSAF WAS A STRONG VOCAL OPPONENT TO THE UNION AND THAT HIS DETERMINATION TO OPPOSE THE UNION CONTINUED EVEN AFTER THE UNION WAS CERTIFIED AS BARGAINING AGENT. WE FURTHER FIND THAT HIS OPPOSITION TO THE UNION AND HIS KNOWLEDGE THAT MR. WILLS WAS THE RINGLEADER WHO ASSISTED THE UNION TO BECOME THE BARGAINING AGENT WERE THE MOTIVATING FACTORS WHICH CAUSED THE GRIEVOR TO BE DEALT WITH BY THE RESPONDENT ON APRIL 22ND, 1969 IN THE MANNER IN WHICH HE WAS.

13. WHILE MR. ASSAF STATED THAT HE WAS MERELY SUPPORTING THE NIGHT MANAGER'S DECISION TO LAY-OFF MR. WILLS, WE FIND THAT THE EVIDENCE DOES NOT SUPPORT THIS CONTENTION. HAVING REGARD TO THE CONTRADICTIONS IN THE EVIDENCE OF MR. COOPE AS TO THE TIME THAT HIS DECISION TO LAY-OFF MR. WILLS WAS MADE, THE FACT THAT MR. COOPE ANTICIPATED THAT MR. WILLS WOULD HAVE BEEN RE-EMPLOYED ON MAY 20TH WHEN HE RETURNED TO WORK AND THE DECISION OF MR. ASSAF TO REFUSE TO RE-EMPLOY MR. WILLS FOLLOWING THE THIRTY DAY SUSPENSION SATISFIES US THAT MR. ASSAF WAS THE DOMINANT CHARACTER IN EFFECTING THE LAY-OFF. MR. ASSAF WAS PRESENT AT THE TIME THE CUSTOMER COMPLAINED AND HE TOOK NO ACTION AT THAT TIME. HAD HE TREATED THE COMPLAINT AS A SERIOUS MATTER HE WOULD NOT HAVE HAD TO RELY UPON ANY RECOMMENDATION OF MR. COOPE AS HE PURPORTED TO DO. MR. COOPE'S EXPLANATION AS TO THE MANNER IN WHICH THE CUSTOMER COMPLAINED LEADS US TO BELIEVE THAT IF ANYONE WAS AGGRESSIVE AND RUDE ON THE EVENING OF

APRIL 19TH IT WAS THE CUSTOMER RATHER THAN THE WAITER. HAVING REGARD TO THE MANNER IN WHICH MR. COOPE AND MR. ASSAF TESTIFIED AND THE CONTRADICTORY NATURE OF THEIR TESTIMONY, WE ARE NOT PREPARED TO ACCEPT THEIR EXPLANATIONS FOR THE REASON FOR THE LAY-OFF OF MR. WILLS.

14. WE ACCORDINGLY FIND THAT MR. WILLS WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTIONS 50 AND 52 OF THE LABOUR RELATIONS ACT.

15. FOR THE REASONS SET OUT ABOVE, WE THEREFORE DETERMINE THAT:

- (A) WILLIAM LAWRENCE WILLS BE REINSTATED FORTHWITH IN THE POSITION HELD BY HIM AT THE TIME HE WAS SUSPENDED;
- (B) THAT THE RESPONDENT PAY TO MR. WILLS THE SUM OF \$209.00 FORTHWITH AS COMPENSATION FOR THE LOSS OF EARNINGS SUSTAINED BY MR. WILLS BETWEEN APRIL 22ND, 1969 AND THE DATE OF THE HEARING IN THIS MATTER;
- (C) THE BOARD DIRECTS THAT THE PARTIES MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF THE LOSS OF EARNINGS THAT MR. WILLS SUSTAINED BY REASON OF HIS HAVING BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE ACT BETWEEN THE DATE OF THE HEARING IN THIS MATTER AND THE DATE OF HIS REINSTATEMENT;
- (D) IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES ON THE AMOUNT REFERRED TO IN PARAGRAPH (B) HEREOF WITHIN 14 DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON, AT THE REQUEST OF EITHER PARTY, THE BOARD WILL HOLD A FURTHER HEARING AT WHICH THE PARTIES WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND MAKE REPRESENTATIONS AS TO THE ADDITIONAL AMOUNT TO BE PAID TO MR. WILLS.

16150-69-U: Miss Ruth Wayne (Complainant) v. MR. WILLINEGGAR (Respondent).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: JUNE 4, 1969.

1. THIS IS A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT ALLEGES THAT SHE HAS BEEN DEALT WITH CONTRARY TO THE PROVISIONS OF SECTION 65 (A) OF THE ACT. THE COMPLAINANT DOES NOT ALLEGE A VIOLATION OF ANY OTHER SECTION OF THE LABOUR RELATIONS ACT. IN THE NATIONAL SEA PRODUCTS LIMITED CASE, O.L.R.B. MONTHLY REPORT, MAY 1961, P. 62, THE BOARD SAID:

...IN OUR OPINION, SECTION 65 IS A PROCEDURAL AND REMEDIAL SECTION. IT DOES NOT IN ITSELF ESTABLISH A SUBSTANTIVE RIGHT. THE BOARD'S JURISDICTION TO GRANT RELIEF UNDER SECTION 65 IS LIMITED TO CASES IN WHICH THE AGGRIEVED PERSON HAS BEEN REFUSED EMPLOYMENT, DISCHARGED, DISCRIMINATED AGAINST, THREATENED, COERCED, INTIMIDATED, OR OTHERWISE DEALT WITH CONTRARY TO SOME SPECIFIC PROVISION OF THE LABOUR RELATIONS ACT.

ON THIS GROUND ALONE THE COMPLAINT WOULD APPEAR TO BE WITHOUT MERIT.

2. THE BOARD, HOWEVER, HAS CAREFULLY CONSIDERED THE STATEMENT OF THE COMPLAINANT OBTAINED BY THE FIELD OFFICER APPOINTED IN THIS MATTER WITH A VIEW TO ASCERTAINING WHETHER SOME OTHER SECTION OF THE LABOUR RELATIONS ACT MAY HAVE BEEN VIOLATED. IT APPEARS THAT THE COMPLAINANT WAS IN THE EMPLOY OF TUNNEL BAR B-Q LIMITED WITH WHICH COMPANY THE NAMED RESPONDENT APPEARS TO BE ASSOCIATED. SHE ALLEGES THAT WHEN SHE WAS HIRED SHE WAS TOLD SHE WOULD HAVE TO SIGN AND DID IN FACT SIGN A DUES AUTHORIZATION FORM UNDER THE TERMS OF A COLLECTIVE AGREEMENT BETWEEN TUNNEL BAR B-Q AND RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, LOCAL 1002. SHE WAS DISMISSED BY THE RESPONDENT ON MARCH 31ST, BUT THERE IS NO ALLEGATION THAT IT WAS FOR UNION ACTIVITY. SHE DOES NOT WISH TO RETURN TO WORK AT TUNNEL BAR B-Q AND IS NOT CLAIMING COMPENSATION AGAINST THAT COMPANY. HER COMPLAINT AS SET OUT IN HER STATEMENT TO THE FIELD OFFICER IS THAT SHE HAS NOT BEEN PROPERLY REPRESENTED BY THE UNION AND SHE IS ASKING FOR THE REFUND OF \$104.00 IN UNION DUES THAT WERE DEDUCTED FROM HER PAY. IN OTHER WORDS, IT NOW APPEARS THAT HER COMPLAINT IS AGAINST THE UNION RATHER THAN HER FORMER EMPLOYER.

3. SECTION 65(1) PROVIDES AS FOLLOWS:

65-(1) THE BOARD MAY AUTHORIZE A FIELD OFFICER TO INQUIRE INTO A COMPLAINT THAT,

(A) A PERSON HAS BEEN REFUSED EMPLOYMENT, DISCHARGED, DISCRIMINATED AGAINST, THREATENED, COERCED, INTIMIDATED OR OTHERWISE DEALT WITH CONTRARY TO THIS ACT AS TO HIS EMPLOYMENT, OPPORTUNITY FOR EMPLOYMENT OR CONDITIONS OF EMPLOYMENT;

ASSUMING THAT THE COMPLAINANT COULD ESTABLISH THAT THE UNION IN QUESTION HAD FAILED TO GIVE HER FAIR REPRESENTATION, WE ARE UNABLE TO SEE HOW SUCH CONDUCT FALLS WITHIN CLAUSE (A) AS SET OUT ABOVE. THERE IS NO SUGGESTION THAT SHE WAS REFUSED EMPLOYMENT OR DISCHARGED, ETC., BECAUSE OF ANY ACTION OR FAILURE TO ACT ON THE PART OF THE SAID UNION. IN THESE CIRCUMSTANCES AND HAVING REGARD TO SECTION 46 OF THE BOARD'S RULES OF PROCEDURE, THE COMPLAINT DOES NOT IN OUR OPINION MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND IT IS THEREFORE DISMISSED.

INDEXED ENDORSEMENTS - SECTION 47(A)

15613-68-M: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 831 (APPLICANT) v. PEEL COUNTY BOARD OF EDUCATION (RESPONDENT) v. THE BOARD OF EDUCATION FOR THE TOWN OF MISSISSAUGA MAINTENANCE EMPLOYEES' ASSOCIATION (INTERVENER) v. PEEL COUNTY BOARD OF EDUCATION CARETAKERS' ASSOCIATION (INTERVENER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: W. A. ACTON AND F.L. TAYLOR FOR THE APPLICANT; DONALD E. HOUCK, R.C. MANN AND J.J.A. BROWN FOR THE RESPONDENT; ROBERT P. ARMSTRONG, G.J. FEETHAM AND ALEX HUTCHINSON FOR THE INTERVENER MAINTENANCE ASSOCIATION; ROBERT P. ARMSTRONG, THOMAS FRASER AND EVERETT LARGE FOR THE INTERVENER CARETAKER'S ASSOCIATION.

DECISION OF THE BOARD: JUNE 18, 1969.

1. THIS IS AN APPLICATION FOR RELIEF UNDER SECTION 47A, SUBSECTIONS (5), (7) AND (10) OF THE LABOUR RELATIONS ACT. THE APPLICANT UNION, HEREINAFTER REFERRED TO AS LOCAL 831, WAS THE BARGAINING AGENT FOR A UNIT OF EMPLOYEES FORMERLY EMPLOYED BY BRAMPTON PUBLIC SCHOOL BOARD WITH WHICH IT HAD A COLLECTIVE AGREEMENT. THE AGREEMENT WAS EFFECTIVE UNTIL FEBRUARY 28TH, 1969 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE.

2. THE BOARD OF EDUCATION FOR THE TOWN OF MISSISSAUGA MAINTENANCE EMPLOYEES' ASSOCIATION AND THE PEEL COUNTY BOARD OF EDUCATION CARETAKERS' ASSOCIATION (FORMERLY THE MISSISSAUGA CARETAKERS' ASSOCIATION), BY LETTERS DATED FEBRUARY 10, 1969, ADVISED THE BOARD OF THEIR INTEREST IN THE MATTER, APPEARED AT THE HEARING AND ARE PROPER PARTIES TO THESE PROCEEDINGS.

3. BY VIRTUE OF THE SECONDARY SCHOOLS AND BOARDS OF EDUCATION AMENDMENT ACT, 1968, STATUTES OF ONTARIO, CHAPTER 122, THE BRAMPTON PUBLIC SCHOOL BOARD CEASED TO EXIST ON DECEMBER 31, 1968, AND BY THE TERMS OF THE SAME ACT WAS SUCCEEDED BY THE PEEL COUNTY BOARD OF EDUCATION, EFFECTIVE JANUARY 1, 1969. TWO DAYS LATER, ON JANUARY 3, 1969, THE APPLICANT UNION GAVE NOTICE TO THE PEEL COUNTY BOARD OF EDUCATION, PURSUANT TO THE PROVISIONS OF SECTION 47A(2), REQUESTING THAT THE SAID BOARD MEET AND BARGAIN WITH A VIEW TO MAKING A NEW COLLECTIVE AGREEMENT. NO REPLY WAS RECEIVED FROM THE BOARD. PRESENT APPLICATION WAS THEN MADE BY LOCAL 831.

4. AMONG OTHERS REPLACED BY THE NEW BOARD AS THE RESULT OF THE LEGISLATION WAS THE FORMER THE MISSISSAUGA BOARD OF EDUCATION. THE MISSISSAUGA BOARD HAD BEEN PARTY TO A COLLECTIVE AGREEMENT WITH THE MISSISSAUGA CARETAKERS' ASSOCIATION, NOW THE PEEL COUNTY BOARD OF EDUCATION CARETAKERS' ASSOCIATION, AND TO ANOTHER COLLECTIVE AGREEMENT WITH THE BOARD OF EDUCATION FOR THE TOWN OF MISSISSAUGA MAINTENANCE EMPLOYEES' ASSOCIATION.

5. HAVING REGARD TO THE SUBMISSIONS OF THE PARTIES, AND IN CONFORMITY WITH THE REASONING SET OUT IN THE MIDDLESEX COUNTY BOARD OF EDUCATION CASE (BOARD FILE NO. 15935-68-M), WE FIND THAT SECTION 47A OF THE LABOUR RELATIONS ACT IS APPLICABLE. ON THE SAME BASIS WE FURTHER FIND A UNIT COMPOSED OF EMPLOYEES ENGAGED IN MAINTENANCE SERVICES AND PLANT OPERATIONS TO BE APPROPRIATE HEREIN FOR THE PURPOSES OF COLLECTIVE BARGAINING.

6. THE BOARD, THEREFORE, FINDS THAT ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT MAINTANANCE FOREMEN AND SUPERVISORS, PERSONS ABOVE THE RANK OF MAINTENANCE FOREMAN AND SUPERVISOR, OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING.

7. HAVING REGARD TO THE PROVISIONS OF THE SECONDARY SCHOOLS AND BOARDS OF EDUCATION AMENDMENT ACT (SUPRA), THE BOARD'S DECISION DATED MAY 8, 1969, IN THE WATERLOO COUNTY BOARD OF EDUCATION CASE (BOARD FILE NO. 15561-68-M), AND THE FACT THAT EACH OF THE UNIONS CONCERNED ONLY REPRESENT PART OF THE UNIT FOUND TO BE APPROPRIATE IN PARAGRAPH 6, THE BOARD IS OF THE OPINION THAT A REPRESENTATION VOTE SHOULD BE HELD IN THE INSTANT CASE.

8. ACCORDINGLY, PURSUANT TO SUBSECTION (7) OF SECTION 47A, THE BOARD DIRECTS THE TAKING OF A REPRESENTATION VOTE. THE VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

9. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH:

- (a) CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 831; OR
- (b) PEEL COUNTY BOARD OF EDUCATION CARETAKERS' ASSOCIATION; OR
- (c) THE BOARD OF EDUCATION FOR THE TOWN OF MISSISSAUGA MAINTENANCE EMPLOYEES' ASSOCIATION.

10. THE MATTER IS REFERRED TO THE REGISTRAR.

15660-68-M: THE MIDDLESEX COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD (APPLICANT) v. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1166 (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: JOHN P. SANDERSON, KEN REAGEN AND ROY COPE FOR THE APPLICANT; F. PYKE, A. CUNNINGHAM AND W.A. ACTON FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 16, 1969.

• • •

2. THIS IS AN APPLICATION BROUGHT PURSUANT TO THE PROVISIONS OF SECTION 47A OF THE LABOUR RELATIONS ACT. THE APPLICANT SEEKS A DETERMINATION BY THE BOARD AS TO WHETHER CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1166, HEREINAFTER CALLED "THE UNION", HAS BARGAINING RIGHTS FOR THE CUSTODIAL AND MAINTENANCE EMPLOYEES OF THE APPLICANT.

3. THE FOLLOWING ARE THE RELEVANT FACTS FORMING THE BACKGROUND TO THE APPLICATION. ON JULY 8, 1968, THE UNION WAS CERTIFIED AS BARGAINING AGENT FOR "ALL NON-TEACHING EMPLOYEES OF THE COMBINED ROMAN CATHOLIC SEPARATE SCHOOL BOARD OF THE CITY OF LONDON, ENGAGED IN CUSTODIAL AND MAINTENANCE SERVICES, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR (24) HOURS PER WEEK". THE UNIT WAS DETERMINED HAVING REGARD TO THE AGREEMENT OF THE PARTIES.

4. ON DECEMBER 31, 1968, BY VIRTUE OF THE PROVISIONS OF THE SEPARATE SCHOOLS AMENDMENT ACT 1968 STATUTES OF ONTARIO 1968 CHAPTER 125, COMBINED ROMAN CATHOLIC SEPARATE SCHOOL BOARD FOR THE CITY OF LONDON CEASED TO EXIST AND A NEW BOARD, THE MIDDLESEX COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD, WAS ESTABLISHED, AND THE EMPLOYEES CONCERNED IN THIS MATTER BECAME EMPLOYEES OF THE NEW BOARD AS OF JANUARY 1, 1969.

5. THE UNION, BY LETTER DATED JANUARY 8, 1969, SOUGHT VOLUNTARY RECOGNITION AND, IN THE ALTERNATIVE, GAVE NOTICE TO BARGAIN UNDER SECTION 47A. THE APPLICANT DECLINED TO GIVE VOLUNTARY RECOGNITION AND ACCEPTED THE NOTICE AS PROPER NOTICE UNDER SECTION 47A. THE PARTIES ARE IN AGREEMENT THAT THE PROVISIONS OF SECTION 47A(10) OF THE LABOUR RELATIONS ACT ARE APPLICABLE IN THE SITUATION.

6. PURSUANT TO THE PROVISIONS OF SECTION 47A(1), THE EMPLOYEES OF ALL OF THE SCHOOL BOARDS WITH WHICH WE ARE HERE CONCERNED ARE DEEMED TO BE INTERMINGLED. INSOFAR AS WE CAN SEE AT THIS TIME, THE EMPLOYEES ARE NOT DISTINGUISHABLE ON A GEOGRAPHIC BASIS. IN PREVIOUS CASES, THE BOARD HAS FOUND A UNIT COMPOSED OF EMPLOYEES OF SCHOOL BOARDS ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS TO BE APPROPRIATE FOR COLLECTIVE BARGAINING. IN THE PRESENT INSTANCE AND HAVING REGARD TO THE PROVISIONS OF SECTION 47A(5)(c) OF THE LABOUR RELATIONS ACT, WE SEE NO REASON WHY THE UNIT SHOULD NOT BE SO DESCRIBED IN THE PRESENT CASE.

7. THE BOARD, THEREFORE, FINDS THAT ALL EMPLOYEES OF THE MIDDLESEX COUNTY ROMAN CATHOLIC SEPARATE SCHOOL BOARD ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING.

8. HAVING REGARD TO THE PROVISIONS OF THE SEPARATE SCHOOLS AMENDMENT ACT (SUPRA), THE BOARD'S DECISION IN THE WATERLOO COUNTY BOARD OF EDUCATION CASE (BOARD FILE NO. 15661-68-M), AND THE FACT THAT THE RESPONDENT ONLY REPRESENTED A PART OF THE UNIT FOUND TO BE APPROPRIATE IN PARAGRAPH 7, THE BOARD IS OF THE OPINION THAT A REPRESENTATION VOTE SHOULD BE HELD IN THE INSTANT CASE.

9. ACCORDINGLY, PURSUANT TO SUBSECTION (7) OF SECTION 47A, THE BOARD DIRECTS THE TAKING OF A REPRESENTATION VOTE. THE VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE APPLICANT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE APPLICANT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

10. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE RESPONDENT.

11. THE MATTER IS REFERRED TO THE REGISTRAR.

15933-68-M: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE MIDDLESEX COUNTY BOARD OF EDUCATION, EAST MIDDLESEX DISTRICT HIGH SCHOOL BOARD (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: F. H. PYKE FOR THE APPLICANT, RONALD W. DICKIE FOR THE RESPONDENTS.

DECISION OF THE BOARD: JUNE 11, 1969.

• • •

2. THIS IS AN APPLICATION FOR RELIEF UNDER SECTION 47A OF THE LABOUR RELATIONS ACT.

3. PURSUANT TO THE PROVISIONS OF THE SECONDARY SCHOOLS AND BOARDS OF EDUCATION AMENDMENT ACT, 1968, STATUTES OF ONTARIO, CHAPTER 122, THE RESPONDENT THE MIDDLESEX COUNTY BOARD OF EDUCATION ON JANUARY 1ST, 1969, BECAME A DIVISIONAL BOARD THAT HAD JURISDICTION OVER THE SCHOOL DIVISION IN MIDDLESEX COUNTY WHICH WAS FORMERLY COMPRISED OF DISTINCT PUBLIC SCHOOL BOARDS AND HIGH SCHOOL BOARDS. AS OF JANUARY 1ST, 1969, THE SAID PUBLIC SCHOOL BOARDS AND THE HIGH SCHOOL BOARDS, INCLUDING THE RESPONDENT EAST MIDDLESEX DISTRICT HIGH SCHOOL BOARD, WERE DISSOLVED.

4. BY A CERTIFICATE OF THE BOARD DATED JULY 4TH, 1968, THE APPLICANT BECAME THE BARGAINING AGENT FOR ALL NURSING EMPLOYEES OF EAST MIDDLESEX DISTRICT HIGH SCHOOL BOARD EMPLOYED IN THE SECONDARY SCHOOL SYSTEM IN THE TOWNSHIPS OF LONDON AND DORCHESTER. AT THE TIME THE ABOVE NAMED HIGH SCHOOL BOARD WAS DISSOLVED THE APPLICANT STILL HELD THE AFORESAID BARGAINING RIGHTS ALTHOUGH NO COLLECTIVE AGREEMENT HAD BEEN ENTERED INTO WITH THE BOARD.

5. FOR THE REASONS GIVEN IN THE BOARD'S DECISION DATED MAY 8TH, 1969, IN THE WATERLOO COUNTY BOARD OF EDUCATION CASE (BOARD FILE No. 15561-68-M), WE FIND THAT SECTION 47A OF THE ACT IS APPLICABLE. PURSUANT TO SUBSECTION (10) OF SECTION 47A, THE EMPLOYEES OF ALL OF THE PUBLIC SCHOOL BOARDS AND HIGH SCHOOL BOARDS, WHO ON AND AFTER JANUARY 1ST, 1969 BECAME EMPLOYEES OF THE RESPONDENT THE MIDDLESEX COUNTY BOARD OF EDUCATION, ARE DEEMED TO HAVE BEEN INTERMINGLED. AS FAR AS WE ARE ABLE TO SEE AT THIS TIME, THE EMPLOYEES OF THE RESPONDENT ARE NOT DISTINGUISHABLE ON A GEOGRAPHIC BASIS (SEE THE WATERLOO COUNTY BOARD OF EDUCATION CASE, SUPRA). IN OUR VIEW, HOWEVER, THE COMMUNITY OF INTEREST AMONG CLASSIFICATIONS OF EMPLOYEES IS A FACTOR FOR THE BOARD TO CONSIDER IN DETERMINING THE APPROPRIATE BARGAINING UNIT. THE BOARD HAS FOUND A UNIT COMPOSED OF NURSING EMPLOYEES IN SCHOOLS TO BE APPROPRIATE FOR COLLECTIVE BARGAINING. WE SEE NO REASON TO DEPART FROM DESCRIBING THE UNIT IN THE SAME TERMS IN THE INSTANT CASE. FURTHER, SINCE ALL OF THE FORMER PUBLIC SCHOOL BOARDS AND HIGH SCHOOL BOARDS NOW FALL UNDER THE JURISDICTION OF THE RESPONDENT THE MIDDLESEX COUNTY BOARD OF EDUCATION, WE ARE OF THE OPINION THAT ANY BARGAINING UNIT SHOULD ENCOMPASS ALL OF THE FORMER SCHOOL BOARDS.

6. THE BOARD THEREFORE FINDS THAT ALL NURSING EMPLOYEES OF THE RESPONDENT CONSTITUTE A UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING.

7. HAVING REGARD TO THE PROVISIONS OF THE SECONDARY SCHOOLS AND BOARDS OF EDUCATION AMENDMENT ACT (SUPRA), THE BOARD'S DECISION IN THE WATERLOO COUNTY BOARD OF EDUCATION CASE (SUPRA), AND THE FACT THAT THE APPLICANT ONLY REPRESENTED A PART OF THE UNIT FOUND TO BE APPROPRIATE IN PARAGRAPH 6, THE BOARD IS OF THE OPINION THAT A REPRESENTATION VOTE SHOULD BE HELD IN THE INSTANT CASE.

8. ACCORDINGLY, PURSUANT TO SUBSECTION (7) OF SECTION 47A, THE BOARD DIRECTS THE TAKING OF A REPRESENTATION VOTE. THE VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

9. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

10. THE MATTER IS REFERRED TO THE REGISTRAR.

15934-68-M: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V.
THE MIDDLESEX COUNTY BOARD OF EDUCATION, EAST MIDDLESEX DISTRICT
HIGH SCHOOL BOARD (RESPONDENTS) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: F. H. PYKE FOR THE APPLICANT.
RONALD W. DICKIE FOR THE RESPONDENTS, NO ONE FOR THE
OBJECTORS.

DECISION OF THE BOARD: JUNE 11, 1969.

• • •

2. THIS IS AN APPLICATION FOR RELIEF UNDER SECTION 47A OF
THE LABOUR RELATIONS ACT.

3. PURSUANT TO THE PROVISIONS OF THE SECONDARY SCHOOLS AND
BOARDS OF EDUCATION AMENDMENT ACT, 1968, STATUTES OF ONTARIO,
CHAPTER 122, THE RESPONDENT THE MIDDLESEX COUNTY BOARD OF EDUCATION
ON JANUARY 1ST, 1969, BECAME A DIVISIONAL BOARD THAT HAD JURISDI-
CTION OVER THE SCHOOL DIVISION IN MIDDLESEX COUNTY WHICH WAS FORMERLY
COMPRISED OF DISTINCT PUBLIC SCHOOL BOARDS AND HIGH SCHOOL BOARDS.
AS OF JANUARY 1ST, 1969, THE SAID PUBLIC SCHOOL BOARDS AND THE HIGH
SCHOOL BOARDS, INCLUDING THE RESPONDENT EAST MIDDLESEX DISTRICT HIGH
SCHOOL BOARD, WERE DISSOLVED.

4. BY A CERTIFICATE OF THE BOARD DATED AUGUST 19TH, 1968, THE
APPLICANT ACQUIRED THE BARGAINING RIGHTS FOR ALL OFFICE EMPLOYEES
OF EAST MIDDLESEX DISTRICT HIGH SCHOOL BOARD, SAVE AND EXCEPT SECRE-
TARY-TREASURER AND PERSONS ABOVE THE RANK OF SECRETARY-TREASURER.
AT THE TIME THE ABOVE NAMED HIGH SCHOOL BOARD WAS DISSOLVED THE
APPLICANT STILL HELD THE AFORESAID BARGAINING RIGHTS ALTHOUGH NO
COLLECTIVE AGREEMENT HAD BEEN ENTERED INTO WITH THE BOARD.

5. FOR THE REASONS GIVEN IN THE BOARD'S DECISION DATED MAY
8TH, 1969, IN THE WATERLOO COUNTY BOARD OF EDUCATION CASE (BOARD
FILE NO. 15561-68-M), WE FIND THAT SECTION 47A OF THE ACT IS
APPLICABLE, PURSUANT TO SUBSECTION (10) OF SECTION 47A, THE EM-
PLOYEES OF ALL OF THE PUBLIC SCHOOL BOARDS AND HIGH SCHOOL BOARDS,
WHO ON AND AFTER JANUARY 1ST, 1969 BECAME EMPLOYEES OF THE RES-
PONDENT THE MIDDLESEX COUNTY BOARD OF EDUCATION, ARE DEEMED TO
HAVE BEEN INTERMINGLED. AS FAR AS WE ARE ABLE TO SEE AT THIS
TIME, THE EMPLOYEES OF THE RESPONDENT ARE NOT DISTINGUISHABLE ON
A GEOGRAPHIC BASIS (SEE THE WATERLOO COUNTY BOARD OF EDUCATION
CASE, SUPRA). IN OUR VIEW, HOWEVER, THE COMMUNITY OF INTEREST
AMONG CLASSIFICATIONS OF EMPLOYEES IS A FACTOR FOR THE BOARD TO
CONSIDER IN DETERMINING THE APPROPRIATE BARGAINING UNIT. THE

BOARD HAS CONSISTENTLY FOUND A UNIT COMPOSED OF OFFICE EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING SEPARATE AND APART FROM OTHER EMPLOYEES. WE SEE NO REASON TO DEPART FROM DESCRIBING THE UNIT IN THE SAME TERMS IN THE INSTANT CASE. FURTHER, SINCE ALL OF THE FORMER PUBLIC SCHOOL BOARDS AND HIGH SCHOOL BOARDS NOW FALL UNDER THE JURISDICTION OF THE RESPONDENT THE MIDDLESEX COUNTY BOARD OF EDUCATION, WE ARE OF THE OPINION THAT ANY BARGAINING UNIT SHOULD ENCOMPASS ALL OF THE FORMER SCHOOL BOARDS.

6. THE BOARD THEREFORE FINDS THAT ALL OFFICE EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT SECRETARY-TREASURER AND PERSONS ABOVE THE RANK OF SECRETARY-TREASURER, CONSTITUTE A UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING.

7. HAVING REGARD TO THE PROVISIONS OF THE SECONDARY SCHOOLS AND BOARDS OF EDUCATION AMENDMENT ACT (SUPRA), THE BOARD'S DECISION IN THE WATERLOO COUNTY BOARD OF EDUCATION CASE (SUPRA), AND THE FACT THAT THE APPLICANT ONLY REPRESENTED A PART OF THE UNIT FOUND TO BE APPROPRIATE IN PARAGRAPH 6, THE BOARD IS OF THE OPINION THAT A REPRESENTATION VOTE SHOULD BE HELD IN THE INSTANT CASE.

8. ACCORDINGLY, PURSUANT TO SUBSECTION (7) OF SECTION 47A, THE BOARD DIRECTS THE TAKING OF A REPRESENTATION VOTE. THE VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

9. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

10. THE MATTER IS REFERRED TO THE REGISTRAR.

15935-68-M: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE MIDDLESEX COUNTY BOARD OF EDUCATION; GLENCOE DISTRICT HIGH SCHOOL BOARD; EAST MIDDLESEX DISTRICT HIGH SCHOOL BOARD; STRATHROY DISTRICT COLLEGIATE INSTITUTE (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: F. H. PYKE FOR THE APPLICANT, RONALD W. DICKIE FOR THE RESPONDENTS.

DECISION OF THE BOARD: JUNE 11, 1969.

• • •

2. THIS IS AN APPLICATION FOR RELIEF UNDER SECTION 47A OF THE LABOUR RELATIONS ACT.

3. PURSUANT TO THE PROVISIONS OF THE SECONDARY SCHOOLS AND BOARDS OF EDUCATION AMENDMENT ACT, 1968, STATUTES OF ONTARIO, CHAPTER 122, THE RESPONDENT THE MIDDLESEX COUNTY BOARD OF EDUCATION ON JANUARY 1ST, 1969, BECAME A DIVISIONAL BOARD THAT HAD JURISDICTION OVER THE SCHOOL DIVISION IN MIDDLESEX COUNTY WHICH WAS FORMERLY COMPRISED OF DISTINCT PUBLIC SCHOOL BOARDS AND HIGH SCHOOL BOARDS. AS OF JANUARY 1ST, 1969, THE SAID PUBLIC SCHOOL BOARDS AND THE HIGH SCHOOL BOARDS, INCLUDING THE NAMED RESPONDENTS, GLENCOE DISTRICT HIGH SCHOOL BOARD, EAST MIDDLESEX DISTRICT HIGH SCHOOL BOARD AND THE STRATHROY DISTRICT COLLEGIATE INSTITUTE, WERE DISSOLVED.

4. BY CERTIFICATES OF THE BOARD ISSUED IN JULY OF 1968, THE APPLICANT WAS CERTIFIED AS BARGAINING AGENT FOR THE EMPLOYEES OF THE GLENCOE DISTRICT HIGH SCHOOL BOARD, EAST MIDDLESEX DISTRICT HIGH SCHOOL BOARD AND THE STRATHROY DISTRICT COLLEGIATE INSTITUTE WHO WERE ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS. AT THE TIME THE ABOVE THREE HIGH SCHOOL BOARDS WERE DISSOLVED, THE APPLICANT STILL HELD THE AFORESAID BARGAINING RIGHTS ALTHOUGH NO COLLECTIVE AGREEMENT HAD BEEN ENTERED INTO WITH ANY OF THE BOARDS.

5. FOR THE REASONS GIVEN IN THE BOARD'S DECISION DATED MAY 8TH, 1969, IN THE WATERLOO COUNTY BOARD OF EDUCATION CASE (BOARD FILE No. 15561-68-M), WE FIND THAT SECTION 47A OF THE ACT IS APPLICABLE. PURSUANT TO SUBSECTION (10) OF SECTION 47A, THE EMPLOYEES OF ALL OF THE PUBLIC SCHOOL BOARDS AND HIGH SCHOOL BOARDS, WHO ON AND AFTER JANUARY 1ST, 1969 BECAME EMPLOYEES OF THE RESPONDENT THE MIDDLESEX COUNTY BOARD OF EDUCATION, ARE DEEMED TO HAVE BEEN INTERMINGLED. AS FAR AS WE ARE ABLE TO SEE AT THIS TIME, THE EMPLOYEES OF THE RESPONDENT ARE NOT DISTINGUISHABLE ON A GEOGRAPHIC BASIS (SEE THE WATERLOO COUNTY BOARD OF EDUCATION CASE, SUPRA). IN OUR VIEW, HOWEVER, THE COMMUNITY OF INTEREST AMONG CLASSIFICATIONS OF EMPLOYEES IS A FACTOR FOR THE BOARD TO CONSIDER IN DETERMINING THE APPROPRIATE BARGAINING UNIT. THE BOARD IN PREVIOUS CASES HAS FOUND A UNIT COMPOSED OF EMPLOYEES OF SCHOOL BOARDS ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS TO BE APPROPRIATE FOR COLLECTIVE BARGAINING. WE SEE NO REASON TO DEPART FROM DESCRIBING THE UNIT IN THE SAME TERMS IN THE INSTANT CASE. FURTHER, SINCE ALL OF THE FORMER PUBLIC SCHOOL BOARDS AND HIGH SCHOOL BOARDS NOW FALL UNDER THE JURISDICTION OF THE RESPONDENT THE MIDDLESEX COUNTY BOARD OF EDUCATION, WE ARE OF THE OPINION THAT ANY BARGAINING UNIT SHOULD ENCOMPASS ALL OF THE FORMER SCHOOL BOARDS.

6. THE BOARD THEREFORE FINDS THAT ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERINTENDENTS, PERSONS ABOVE THE RANK OF SUPERINTENDENT AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING.

7. HAVING REGARD TO THE PROVISIONS OF THE SECONDARY SCHOOLS AND BOARDS OF EDUCATION AMENDMENT ACT (SUPRA), THE BOARD'S DECISION IN THE WATERLOO COUNTY BOARD OF EDUCATION CASE (SUPRA), AND THE FACT THAT THE APPLICANT ONLY REPRESENTED A PART OF THE UNIT FOUND TO BE APPROPRIATE IN PARAGRAPH 6, THE BOARD IS OF THE OPINION THAT A REPRESENTATION VOTE SHOULD BE HELD IN THE INSTANT CASE.

8. ACCORDINGLY, PURSUANT TO SUBSECTION (7) SECTION 47A, THE BOARD DIRECTS THE TAKING OF A REPRESENTATION VOTE. THE VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

9. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

10. THE MATTER IS REFERRED TO THE REGISTRAR.

16145-69-M: THE WELLAND COUNTY BOARD OF EDUCATION (APPLICANT) v. CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCALS 468, 524 AND 152 (RESPONDENTS) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: J. F. SWAYZE, R.A. MCLEOD AND F.J. RUTLAND FOR THE APPLICANT; W.A. ACTON AND C.G. MURPHY FOR THE RESPONDENT; DOREEN ROSE AND MARION CHAPMAN FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: JUNE 26, 1969.

• • •

2. THIS IS AN APPLICATION FOR RELIEF UNDER SECTION 47A OF THE LABOUR RELATIONS ACT.

3. PURSUANT TO THE PROVISIONS OF THE SECONDARY SCHOOLS AND BOARD OF EDUCATION AMENDMENT ACT, 1968, STATUTES OF ONTARIO, CHAPTER 122, THE APPLICANT THE WELLAND COUNTY BOARD OF EDUCATION, ON JANUARY 1ST, 1969, BECAME A BOARD THAT HAD JURISDICTION OVER THE SCHOOL DIVISION IN WELLAND COUNTY WHICH FORMERLY COMPRISED DISTINCT PUBLIC SCHOOL BOARDS AND HIGH SCHOOL BOARDS. AS OF JANUARY 1ST, 1969, THE SAID PUBLIC SCHOOL BOARDS AND THE HIGH SCHOOL BOARDS WERE DISSOLVED.

4. ON JANUARY 1ST, 1969, LOCAL 524 OF CANADIAN UNION OF PUBLIC EMPLOYEES WAS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE BOARD OF EDUCATION FOR THE CITY OF WELLAND. ON JANUARY 1ST, 1969, THE BOARD OF EDUCATION FOR THE CITY OF WELLAND WAS ONE OF

THE BOARDS DISSOLVED BY THE SECONDARY SCHOOLS AND BOARDS OF EDUCATION AMENDMENT ACT (SUPRA) AND WAS REPLACED BY THE WELLAND COUNTY BOARD OF EDUCATION.

5. CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 468 WAS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE NIAGARA FALLS DISTRICT BOARD OF EDUCATION. ON THE 1ST OF JANUARY, 1969, THE NIAGARA FALLS DISTRICT BOARD OF EDUCATION WAS DISSOLVED BY THE SECONDARY SCHOOLS AND BOARDS OF EDUCATION AMENDMENT ACT AND REPLACED BY THE WELLAND COUNTY BOARD OF EDUCATION.

6. CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 152 WAS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE THOROLD AND DISTRICT HIGH SCHOOL BOARD. ON JANUARY 1ST, 1969, THE THOROLD AND DISTRICT HIGH SCHOOL BOARD WAS DISSOLVED BY THE SECONDARY SCHOOLS AND BOARDS OF EDUCATION AMENDMENT ACT AND REPLACED BY THE WELLAND COUNTY BOARD OF EDUCATION.

7. FOR THE REASONS GIVEN IN THE BOARD'S DECISION DATED MAY 8TH, 1969, IN THE WATERLOO COUNTY BOARD OF EDUCATION CASE (BOARD FILE NO. 15561-68-M), WE FIND THAT SECTION 47A OF THE ACT IS APPLICABLE. PURSUANT TO SUBSECTION (10) OF SECTION 47A, THE EMPLOYEES OF ALL OF THE PUBLIC SCHOOL BOARDS AND HIGH SCHOOL BOARDS, WHO ON AND AFTER JANUARY 1ST, 1969 BECAME EMPLOYEES OF THE APPLICANT THE WELLAND COUNTY BOARD OF EDUCATION, ARE DEEMED TO HAVE BEEN INTERMINGLED. AS FAR AS WE ARE ABLE TO SEE AT THIS TIME, THE EMPLOYEES OF THE APPLICANT ARE NOT DISTINGUISHABLE ON A GEOGRAPHIC BASES (SEE THE WATERLOO COUNTY BOARD OF EDUCATION CASE, SUPRA). IN OUR VIEW, HOWEVER, THE COMMUNITY OF INTEREST AMONG CLASSIFICATIONS OF EMPLOYEES IS A FACTOR FOR THE BOARD TO CONSIDER IN DETERMINING THE APPROPRIATE BARGAINING UNIT. THE BOARD IN PREVIOUS CASES HAS FOUND A UNIT COMPOSED OF EMPLOYEES OF SCHOOL BOARDS ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS TO BE APPROPRIATE FOR COLLECTIVE BARGAINING. THE BOARD HAS ALSO FOUND A UNIT COMPOSED OF ALL OFFICE EMPLOYEES IN SCHOOLS TO BE APPROPRIATE FOR COLLECTIVE BARGAINING. WE SEE NO REASON TO DEPART FROM DESCRIBING THE UNITS IN THE SAME TERMS IN THE INSTANT CASE. FURTHER, SINCE ALL OF THE FORMER PUBLIC SCHOOL BOARDS AND HIGH SCHOOL BOARDS NOW FALL UNDER THE JURISDICTION OF THE APPLICANT THE WELLAND COUNTY BOARD OF EDUCATION, WE ARE OF THE OPINION THAT ANY BARGAINING UNIT SHOULD ENCOMPASS ALL OF THE FORMER SCHOOL BOARDS.

8. THE BOARD, THEREFORE, FINDS THAT ALL EMPLOYEES OF THE APPLICANT ENGAGED IN MAINTENANCE, SERVICE AND PLANT OPERATIONS, SAVE AND EXCEPT FOREMEN AND SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING (HEREINAFTER REFERRED TO AS BARGAINING UNIT #1).

9. THE BOARD FURTHER FINDS THAT ALL OFFICE EMPLOYEES OF THE APPLICANT, SAVE AND EXCEPT OFFICE MANAGER, BUSINESS ADMINISTRATOR, PERSONS ABOVE THE RANK OF OFFICE MANAGER AND BUSINESS ADMINISTRATOR, PURCHASING AGENT, SECRETARY TO THE OFFICE MANAGER AND SECRETARY TO THE BUSINESS ADMINISTRATOR, CONSTITUTE A UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING (HEREINAFTER REFERRED TO AS BARGAINING UNIT #2).

10. HAVING REGARD TO THE PROVISIONS OF THE SECONDARY SCHOOLS AND BOARDS OF EDUCATION AMENDMENT ACT (SUPRA), THE BOARD'S DECISION IN THE WATERLOO COUNTY BOARD OF EDUCATION CASE (BOARD FILE NO. 15561-68-M), AND THE FACT THAT THE RESPONDENTS ONLY REPRESENTED A PART OF THE UNITS FOUND TO BE APPROPRIATE IN PARAGRAPHS 9 AND 10, THE BOARD IS OF THE OPINION THAT A REPRESENTATION VOTE SHOULD BE HELD IN THE INSTANT CASE.

11. ACCORDINGLY, PURSUANT TO SUBSECTION (7) OF SECTION 47A, OF THE ACT, THE BOARD DIRECTS THE TAKING OF REPRESENTATION VOTES. THE VOTES WILL BE TAKEN AMONG THE EMPLOYEES OF THE APPLICANT IN BARGAINING UNITS #1 AND #2. ALL EMPLOYEES OF THE APPLICANT IN BARGAINING UNITS #1 AND #2 ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTES ARE TAKEN WILL BE ELIGIBLE TO VOTE.

12. WITH RESPECT TO BARGAINING UNIT #1, VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH

- (A) CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 524; OR
- (B) CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 468; OR
- (C) CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 152.

13. WITH RESPECT TO BARGAINING UNIT #2, VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 524.

14. THE MATTER IS REFERRED TO THE REGISTRAR.

INDEXED ENDORSEMENTS - JURISDICTIONAL DISPUTES

16086(A)-69-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 506 AND LOCAL 527 (COMPLAINANTS) v. OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL 124 AND BEMAC PROTECTIVE COATING LIMITED (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: R. KOSKIE, T. NEIL AND F. MANONI FOR THE COMPLAINANTS, J.P. NELLIGAN, J.G. DENIS, B.G. YANDELL AND A. MARIANO FOR THE RESPONDENT UNION, R. McCOMB AND J.G. BEAN FOR THE RESPONDENT COMPANY.

1. THIS IS A COMPLAINT MADE UNDER SECTION 66 OF THE LABOUR RELATIONS ACT.

2. THE COMPLAINANTS (HEREINAFTER REFERRED TO AS THE LABOURERS) ARE REQUESTING THAT THE BOARD MAKE A DIRECTION WITH RESPECT TO A DISPUTE WITH THE RESPONDENT UNION (HEREINAFTER REFERRED TO AS THE CEMENT MASONS) OVER THE LAYING OF HOT MASTIC AND VERMICULITE ON THE PROJECT OF THE RESPONDENT COMPANY (HEREINAFTER REFERRED TO AS BEMAC) AT THE DATA CENTRE IN OTTAWA.

3. BEMAC AND VULCAN ASPHALT AND SUPPLY COMPANY, LIMITED (HEREINAFTER REFERRED TO AS VULCAN) ARE THE ONLY TWO FIRMS IN ONTARIO THAT ARE DOING THE TYPE OF WORK WHICH IS THE SUBJECT OF THIS DISPUTE. IN 1957 THE TWO COMPANIES VOLUNTARILY RECOGNIZED THE LABOURERS AS BARGAINING AGENT FOR ALL OF ITS EMPLOYEES. BOTH COMPANIES WERE PARTIES TO A SERIES OF COLLECTIVE AGREEMENTS WITH THE LABOURERS BETWEEN 1957 AND 1965. IN 1966 THE CEMENT MASONS DISPLACED THE LABOURERS AS BARGAINING AGENT FOR THE EMPLOYEES OF BEMAC AND VULCAN. THE CEMENT MASONS SUBSEQUENTLY ENTERED INTO A TWO YEAR COLLECTIVE AGREEMENT WITH BOTH COMPANIES. IN APRIL OF THIS YEAR THE LABOURERS RE-ACQUIRED THE BARGAINING RIGHTS FOR ALL OF THE EMPLOYEES OF BEMAC WORKING AT AND OUT OF TORONTO. THE CEMENT MASONS CONTINUE TO HOLD THE BARGAINING RIGHTS FOR THE EMPLOYEES OF VULCAN.

4. BEMAC MIXES AND PREPARES ITS OWN MASTIC AND VERMICULITE AND APPLIES IT TO A VARIETY OF SURFACES ON BUILDINGS. THE PURPOSE OF A MASTIC COATING IS TO MAKE WATERTIGHT THE AREAS WHICH ARE COVERED. THE VERMICULITE IS AN INSULATING MATERIAL. A MIXER MAN, FOLLOWING A FORMULA, HEATS THE SPECIFIED INGREDIENTS ON SITE, IN A SPECIAL MACHINE OWNED BY BEMAC, AT A SUFFICIENTLY HIGH TEMPERATURE SO AS TO MELT AND BLEND THE COMPONENTS TO A PRESCRIBED CONSISTENCY. THE MASTIC OR VERMICULITE IS THEN TAKEN BY A HELPER IN SUITABLE CONTAINERS, TO THE AREA WHICH IS TO BE TREATED, AND THE MATERIAL IS DEPOSITED ON THE SURFACE. A MECHANIC LAYS OR SPREADS THE MASTIC OR VERMICULITE. WITH MASTIC, WHICH IS A HEAVY BLACK SUBSTANCE, THE LAYING OF THE COATING IS DONE WITH A WOODEN FLOAT. VERMICULITE, WHICH IS A GRANULAR SUBSTANCE, IS SPREAD WITH A RAKE. IMMEDIATELY THEREAFTER THE SURFACE OF THE COATING IS SMOOTHED OR FINISHED. IN THE CASE OF MASTIC, THIS IS DONE WITH A WOODEN FLOAT. VERMICULITE, ON THE OTHER HAND, IS FINISHED BY ROLLING AND TAMING.

5. THE LABOURERS AND CEMENT MASONS MUTUALLY AGREE THAT THE WORK PERFORMED BY MIXER MEN AND HELPERS FALLS UNDER THE JURISDICTION OF THE LABOURERS. BOTH TRADES, HOWEVER, CLAIM JURISDICTION OVER THE WORK DONE BY THE MECHANICS.

6. EXTENSIVE TRAINING AND EXPERIENCE ARE REQUIRED TO ACQUIRE THE DEGREE OF SKILL NECESSARY TO PROFICIENTLY PERFORM THE WORK OF A MECHANIC. THE MASTIC OR VERMICULITE MUST BE APPLIED WHILE THE SUBSTANCES ARE STILL HOT. SPEED IS THEREFORE IMPORTANT. MOREOVER, THE MATERIAL MUST BE SPREAD EVENLY TO A UNIFORM GRADE AND THICKNESS. A HIGHLY DEVELOPED MANUAL DEXTERITY IS NEEDED TO MAKE PROPER "JOINTS".

7. IN THE UNITED KINGDOM THERE IS A FIVE YEAR APPRENTICESHIP PROGRAM IN WHICH THE APPRENTICES LEARN TO DO ALL OF THE WORK DONE BY THE EMPLOYEES OF BEMAC FROM THE MIXING TO THE LAYING AND FINISHING OF HOT MASTIC. AS WELL THE APPRENTICES LEARNED TO LAY PLASTIC AND OTHER ASPHALT SUBSTANCES BOTH HOT AND COLD. IN PAST YEARS BEMAC AND VULCAN HAVE EMPLOYED PERSONS AS MECHANICS WHO HAVE COMPLETED THE ABOVE APPRENTICESHIP TRAINING. UPON COMPLETION OF THE COURSE THE APPRENTICES ARE QUALIFIED JOURNEYMEN ASPHALTERS. IN THIS JURISDICTION, THERE IS NO SIMILAR APPRENTICESHIP COURSE AND NO SPECIALIZED TRADE OF ASPHALTERS. THE APPRENTICESHIP PROGRAM FOR CEMENT MASONS IN ONTARIO PROVIDES FOR TRAINING IN THE LAYING OF HOT MASTIC. THE APPRENTICES, IN FACT, RECEIVE VERY LIMITED, IF ANY, EXPERIENCE IN THIS TYPE OF WORK AS THERE ARE ONLY TWO FIRMS IN THE PROVINCE DOING IT. WITHOUT ADDITIONAL "ON-THE-JOB" TRAINING A JOURNEYMAN CEMENT MASON IS NOT QUALIFIED TO BE A MECHANIC. BY AND LARGE BEMAC HAS TRAINED ITS OWN MECHANICS. THE TWO MECHANICS PRESENTLY IN THE EMPLOY OF BEMAC WERE TRAINED BY THE COMPANY AND HAVE BEEN LAYING HOT MASTIC AND VERMICULITE FOR WELL OVER A DECADE.

8. THERE ARE SOME SIMILARITIES IN THE TOOLS AND TECHNIQUES USED BY CEMENT MASONS IN PERFORMING THE WORK REQUIRED OF THEM BY CEMENT MASONRY CONTRACTORS AND THOSE USED BY THE MECHANICS EMPLOYED BY BEMAC. ALSO THE MATERIALS USED BY WATERPROOFING CONTRACTORS ARE NOT UNLIKE SOME OF THOSE USED BY BEMAC. MOREOVER, THE PURPOSE FOR WHICH THESE MATERIALS ARE USED IS ESSENTIALLY THE SAME. WE WOULD MENTION AT THIS POINT THAT FOR A PERIOD OF YEARS THE CEMENT MASONS HAVE HELD THE BARGAINING RIGHTS FOR THE EMPLOYEES OF A SUBSTANTIAL NUMBER OF WATERPROOFING CONTRACTORS THROUGHOUT THE PROVINCE. THERE IS, HOWEVER, ONE MAJOR AND CRUCIAL DIFFERENCE BETWEEN THE WORK GENERALLY DONE BY CEMENT MASONS FOR CEMENT MASONRY AND WATERPROOFING CONTRACTORS AND THE WORK PERFORMED BY THE MECHANICS IN THE EMPLOY OF BEMAC. THAT DIFFERENCE IS THE ELEMENT OF HEAT. VIRTUALLY ALL OF THE MATERIALS USED BY CEMENT MASONRY CONTRACTORS ARE APPLIED IN A COLD STATE. THE SAME IS TRUE OF WATERPROOFING CONTRACTORS. IN THE CASE OF THE WATERPROOFING CONTRACTORS, THE COLD MATERIALS USED BY THEM ARE GENERALLY APPLIED WITH A BRUSH OR MOP. THE APPLICATION OF THE HOT MASTIC AND VERMICULITE USED BY BEMAC REQUIRES MORE SKILLS THAN THE APPLICATION OF COLD WATERPROOFING MATERIALS. FURTHER, THE SKILLS, IN THIS JURISDICTION, CAN ONLY BE ACQUIRED BY THOROUGH "ON-THE-JOB" TRAINING.

9. IF ONE TAKES INTO ACCOUNT THE NUMBER OF YEARS THAT THE LABOURERS HAVE HELD THE BARGAINING RIGHTS FOR THE MECHANICS AS COMPARED WITH THE NUMBER OF YEARS THE CEMENT MASONS HAVE REPRESENTED THEM, THE LABOURERS HAVE A STRONGER CLAIM TO JURISDICTION OVER THE WORK OF THE MECHANICS. THE HISTORY OF ORGANIZATION OF THE MECHANICS, HOWEVER, IS TOO SHORT TO BE A TRULY SIGNIFICANT FACTOR IN DECIDING THE INSTANT DISPUTE.

10. CEMENT MASONS, BY THE NATURE OF THEIR TRAINING, SHOULD BE BETTER EQUIPPED THAN LABOURERS TO LAY HOT MASTIC AND VERMICULITE. THE LATTER ARE NOT REQUIRED TO TAKE ANY KIND OF FORMAL TRAINING. IN REALITY, HOWEVER, THE APPRENTICESHIP PROGRAM OF CEMENT MASONS DOES NOT PREPARE THEM TO DO THE WORK OF A MECHANIC. IN FACT, THERE IS NO APPRENTICESHIP TRAINING IN ONTARIO, IN ANY TRADE, WHICH TURNS OUT JOURNEYMAN WHO CAN COMPETENTLY DO THE WORK OF A MECHANIC. IN THIS JURISDICTION THE ONLY WAY THAT A PERSON CAN BECOME A QUALIFIED MECHANIC IS BY "ON-THE-JOB" TRAINING. ACCORDINGLY, WHILE CEMENT MASONS DURING THEIR APPRENTICESHIP LEARN SOME OF THE BASIC TECHNIQUES AND SKILLS USED IN THE LAYING OF HOT MASTIC AND VERMICULITE, THIS FACT DOES NOT ESTABLISH FOR THEM ANY PROPRIETARY CLAIM TO THE WORK IN DISPUTE.

11. THE MECHANICS, ON OCCASION, DO WORK OTHER THAN THE LAYING OF HOT MASTIC AND VERMICULITE. ON THE WHOLE THOUGH, THE MIXER MEN, HELPERS AND MECHANICS EACH PERFORMS SEPARATE AND DISTINCT FUNCTIONS. ACCORDINGLY, IN OUR VIEW, WERE THE MECHANICS REPRESENTED BY THE CEMENT MASONS AND THE REMAINDER OF THE CREW BY THE LABOURERS, THIS WOULD NOT RESULT IN UNDUE SCHEDULING DIFFICULTIES OR APPRECIABLY LESSEN THE EFFICIENT USE OF BEMAC'S WORK FORCE. ON BALANCE, THE CRITERIA OF EFFICIENCY AND ECONOMY LEND SOMEWHAT GREATER SUPPORT TO THE CASE OF THE LABOURERS THAN THE CEMENT MASONS. THE DIFFERENCE, HOWEVER, IS NOT SUFFICIENT TO BE A DETERMINING FACTOR IN THIS DISPUTE.

12. THE EMPLOYEES OF BEMAC, WHETHER BY LABOURERS OR CEMENT MASONS, HAVE ALWAYS BEEN REPRESENTED IN AN "ALL EMPLOYEE" UNIT. BASED ON THE USUAL CRITERIA TO WHICH THE BOARD LOOKS FOR GUIDANCE IN MAKING DIRECTIONS IN WORK ASSIGNMENT DISPUTES, SUCH AS INDUSTRY, AREA AND EMPLOYER PRACTICE, SKILL, EFFICIENCY AND ECONOMY, NEITHER OF THE COMPETING CONSTRUCTION TRADES HAS MADE OUT A CONVINCING CASE TO BE EXCLUSIVELY ASSIGNED THE WORK OF LAYING HOT MASTIC AND VERMICULITE. STATED ANOTHER WAY, NEITHER THE LABOURERS NOR THE CEMENT MASONS HAVE ESTABLISHED A BONA FIDE CLAIM OVER THE WORK PERFORMED BY ONE CLASSIFICATION OF EMPLOYEES IN THE OVERALL UNIT. THE LABOURERS, HOWEVER, CURRENTLY HOLD THE BARGAINING RIGHTS FOR THE "ALL EMPLOYEE" UNIT WHICH INCLUDES THE MECHANICS TO WHOM BEMAC HAS ASSIGNED THE WORK IN DISPUTE. HAVING REGARD TO ALL OF THE ABOVE CONSIDERATIONS WE SEE NO REASON TO ALTER THAT ASSIGNMENT.

13. THE BOARD ACCORDINGLY DIRECTS THAT THE RESPONDENT COMPANY BEMAC PROTECTIVE COATING LIMITED CONTINUE TO ASSIGN THE WORK OF LAYING HOT MASTIC AND HOT VERMICULITE ON ITS DATA CENTRE PROJECT IN OTTAWA TO ITS EMPLOYEES WHO ARE PRESENTLY REPRESENTED BY THE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 BUT NOT TO THAT UNION OR ITS MEMBERS.

16237(A)-69-JD: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (COMPLAINANT) v. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO AND THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCALS 27, 3233, 681, 3227, 666 AND 1963 AND THE CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: R. KOSKIE, R. FORD AND F. GODDARD FOR THE COMPLAINANT, H. M. ROSSMAN, R.A. MCLELLAN AND L.B. CROSSING FOR THE HYDRO-ELECTRIC POWER POWER COMMISSION OF ONTARIO, L.A. MACLEAN AND E. STEWART FOR THE RESPONDENT UNIONS.

DECISION OF THE BOARD: JUNE 4, 1969.

1. THE COMPLAINANT IN ITS COMPLAINT IS REQUESTING THAT THE BOARD MAKE AN INTERIM ORDER WITH RESPECT TO AN ASSIGNMENT OF WORK WHICH IS IN DISPUTE BETWEEN THE COMPLAINANT AND THE RESPONDENT TRADE UNIONS.

2. THE BOARD IS SATISFIED THAT A STRIKE IS IMMINENT BY REASON OF THE ASSIGNMENT OF WORK WHICH IS THE SUBJECT MATTER OF THE INSTANT DISPUTE.

3. HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES, THE BOARD DEEMS IT ADVISABLE IN ALL THE CIRCUMSTANCES TO MAKE THE FOLLOWING INTERIM ORDER:

THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO SHALL ASSIGN THE WORK OF RELEASING AND STRIPPING BUILT-IN-PLACE PLYWOOD WALL FORMS WHICH ARE BEING USED ON ITS PICKERING GENERATING STATION PROJECT, WITH THE EXCEPTION OF ALL HARDWARE, TO MEMBERS OF THE COMPLAINANT TRADE UNION.

THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO SHALL ASSIGN THE WORK OF REMOVING ALL OF THE HARDWARE, WHICH INCLUDES CABLE BRACING, TIES, WEDGES AND CLAMPS, FROM BUILT-IN-PLACE PLYWOOD WALL FORMS WHICH ARE BEING USED ON ITS PICKERING GENERATING STATION PROJECT TO MEMBERS OF THE RESPONDENT TRADE UNIONS.

4. THIS ORDER SHALL BECOME EFFECTIVE FORTHWITH AND SHALL REMAIN IN EFFECT UNTIL SUCH TIME AS THE BOARD ISSUES A FURTHER DIRECTION.

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION -

CERTIFICATION

14781-68-R: THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) v. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (RESPONDENT) v. CANADIAN UNION OF PUBLIC EMPLOYEES - C.L.C., ONTARIO HYDRO EMPLOYEES' UNION LOCAL 1000 (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

DECISION OF J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER R. W. TEAGLE: JUNE 11, 1969.

1. THE INTERVENER BY LETTERS DATED MAY 21ST AND MAY 23RD, 1969 HAS REQUESTED THE BOARD TO RECONSIDER ITS DECISION DATED MAY 15TH, 1969 IN THIS MATTER ON THE FOLLOWING GROUNDS:

THE BOARD ERRED IN ITS INTERPRETATION AND APPLICATION OF BOARD POLICY WITH RESPECT TO FRAGMENTIZATION AND CARVING OUT OF A SINGLE STATION BARGAINING UNIT FROM A LARGER UNIT IN THE CIRCUMSTANCES OF THIS CASE.

THE BOARD MISCONSTRUED AND MISAPPLIED THE EVIDENCE WITH RESPECT TO THE BARGAINING HISTORY AT THE HEARN AND KEITH STATIONS AND OVER-LOOKED OR DID NOT GIVE ADEQUATE WEIGHT OR CONSIDERATION TO THE EVIDENCE BEARING ON THE RELATIONSHIP AND FUNCTIONAL COHERENCE OF THE STATIONS WITHIN THE SYSTEM OR TO THE DUTIES AND RESPONSIBILITIES OF THE PERSONNEL EMPLOYED AT THE LAKEVIEW STATION WITH RESPECT TO THE SYSTEM AT LARGE.

THE BOARD DID NOT GIVE CONSIDERATION TO THE ADVERSE CONSEQUENCES OF FRAGMENTIZATION IN THE INDUSTRY AND ON COLLECTIVE BARGAINING.

IT IS NOT WITHIN THE JURISDICTIONAL COMPETENCE OF THE BOARD UNDER SECTION 6 (1) OF THE LABOUR RELATIONS ACT TO UTILIZE THE PRE-HEARING REPRESENTATION VOTE DIRECTED FOR THE SOLE PURPOSE OF

OBTAINING THE WISHES OF THE EMPLOYEES AS TO WHETHER THEY WANTED TO BE REPRESENTED BY THE APPLICANT OR CONTINUE TO BE REPRESENTED BY LOCAL 1000, FOR THE ADDITIONAL PURPOSE OF ASCERTAINING THEIR WISHES AS TO THE APPROPRIATENESS OF THE UNIT. CLEARLY THE VOTE CONTEMPLATED BY SECTION 6(1) OF THE ACT IS A VOTE IN WHICH THE EMPLOYEES ARE TO BE ASKED THEIR WISHES ON THE QUESTION OF THE APPROPRIATENESS OF THE UNIT. THE PRE-HEARING REPRESENTATION VOTE DIRECTED IN THIS CASE MANIFESTLY HAD NOTHING TO DO WITH THE APPROPRIATENESS OF THE UNIT. IN THE PREMISES, IT IS OUR RESPECTFUL SUBMISSION THAT IT WOULD BE A JURISDICTIONAL AS WELL AS A FACTUAL ERROR FOR THE BOARD TO TREAT THE VOTE AS IN ANY WAY INDICATIVE OF THE WISHES OF THE EMPLOYEES AS TO THE APPROPRIATENESS OF THE UNIT.

2. THE QUESTION PUT TO THE VOTERS IN THE PRE-HEARING REPRESENTATION VOTE IN THIS MATTER READS AS FOLLOWS:

IN YOUR EMPLOYMENT RELATIONS WITH THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO, DO YOU WISH TO BARGAIN COLLECTIVELY THROUGH THE CANADIAN UNION OF OPERATING ENGINEERS OR CANADIAN UNION OF PUBLIC EMPLOYEES - C.L.C., ONTARIO HYDRO EMPLOYEES' UNION LOCAL 1000?

3. WHILE THE BOARD IN ITS DECISION OF MAY 15TH, 1969 RECOGNIZED THAT CONFLICTING FACTORS EXISTED WHICH MADE ITS DECISION AS TO THE APPROPRIATENESS OF THE PROPOSED BARGAINING UNIT DIFFICULT, THE PRIME FACTORS IN FAVOUR OF THE APPLICANT'S POSITION ARE REFERRED TO IN ITEMS 5, 6 AND 7 OF THE BOARD'S DECISION WHICH READ IN PART AS FOLLOWS:

... THE BOARD THEREFORE, AS EARLY AS 1952, ESTABLISHED A PRACTICE OF FINDING THAT THE EMPLOYEES IN A SINGLE GENERATING STATION COMPRISED AN APPROPRIATE BARGAINING UNIT WHICH COULD BE SEVERED FROM AN ONTARIO-WIDE BARGAINING UNIT.

... MOST CERTAINLY, ANY ARGUMENTS AGAINST FRAGMENTATION OF BARGAINING UNITS ARE SERIOUSLY WEAKENED, IF NOT DESTROYED, BY THE FACT THAT THE APPLICANT CURRENTLY BARGAINS ON BEHALF OF EMPLOYEES AT TWO GENERATING STATIONS WHICH HAD BEEN SEVERED FROM AN ONTARIO-WIDE BARGAINING UNIT. ... ALTHOUGH EMPLOYEES MAY BE TRANSFERRED ON A PERMANENT BASIS

FROM TIME TO TIME TO STAFF NEW GENERATING STATIONS, IT SHOULD BE NOTED THAT THERE WAS NO EVIDENCE OF A DAY-TO-DAY INTERCHANGE OF EMPLOYEES BETWEEN GENERATING STATIONS.

... THE FACT THAT THE RESPONDENT ALREADY BARGAINS WITH MORE THAN ONE TRADE UNION WITH RESPECT TO EMPLOYEES WHO PRODUCE ELECTRICAL POWER HAS NOT CREATED INSURMOUNTABLE PROBLEMS FOR THE RESPONDENT. SINCE THERE IS NO EVIDENCE THAT THE PUBLIC INTEREST HAD BEEN UNDULY THREATENED OR IMPAIRED BY THE FACT THAT THE RESPONDENT HAS BEALED WITH MORE THAN ONE TRADE UNION, WE ARE OF OPINION THAT THE WISHES OF THE EMPLOYEES AS TO THE CHOICE OF THE TRADE UNION TO REPRESENT THEM IN AN APPROPRIATE BARGAINING UNIT SHOULD BE RECOGNIZED.

4. THE BOARD THEN WENT ON TO STATE IN ITEM 8 IN PART AS FOLLOWS:

... SINCE IT WOULD BE READILY APPARENT THAT IF THE EMPLOYEES CHOSE TO BE REPRESENTED BY THE APPLICANT THEY WOULD THEREBY ELECT TO BARGAIN SEPARATELY FROM THE OTHER EMPLOYEES IN THE ONTARIO-WIDE BARGAINING UNIT REPRESENTED BY THE INTERVENER, THE RESULTS OF THE REPRESENTATION VOTE ALREADY CONDUCTED WOULD ACCORDINGLY TEND TO INDICATE THE EMPLOYEES' WISHES WITH RESPECT TO THE APPROPRIATENESS OF THE BARGAINING UNIT PROPOSED BY THE APPLICANT IN THIS CASE. IN VIEW OF THE CONFLICTING FACTORS REFERRED TO, THE BOARD IS OF OPINION THAT IT WOULD BE DESIROUS TO ASCERTAIN THE WISHES OF THE EMPLOYEES AS INDICATED IN THE PRE-HEARING REPRESENTATION VOTE IN ORDER TO ASSIST THE BOARD, PURSUANT TO THE PROVISIONS OF SECTION 6(1) OF THE ACT, TO MAKE A DETERMINATION AS TO WHETHER THE BARGAINING UNIT PROPOSED BY THE APPLICANT IS A UNIT WHICH WOULD BE APPROPRIATE FOR COLLECTIVE BARGAINING IN ALL THE CIRCUMSTANCES IN THIS CASE.

5. THE BOARD RECOGNIZES THAT IF IT HAD ORIGINALLY DIRECTED THE VOTE IN THIS MATTER FOR THE SOLE PURPOSE OF ASCERTAINING THE WISHES OF THE EMPLOYEES AS TO THE APPROPRIATENESS OF THE PROPOSED BARGAINING UNIT, THE QUESTION PUT TO THE EMPLOYEES ON THE BALLOT MAY HAVE BEEN PHRASED SOMEWHAT DIFFERENTLY THAN THE QUESTION QUOTED ABOVE. HOWEVER THAT MAY BE, THE BOARD IS OF OPINION THAT THE ANSWER TO THE QUESTION PUT TO THE EMPLOYEES IN THIS CASE WOULD (AS STATED IN ITEM 8 OF THE BOARD'S DECISION OF MAY 15TH,

1969) "TEND TO INDICATE THE EMPLOYEES' WISHES WITH RESPECT TO THE APPROPRIATENESS OF THE BARGAINING UNIT PROPOSED BY THE APPLICANT IN THIS CASE." WHILE IT IS TRUE THAT THE PRIME PURPOSE FOR DIRECTING THE PRE-HEARING REPRESENTATION VOTE IN THIS CASE WAS TO ASCERTAIN WHETHER THE EMPLOYEES IN THE VOTING CONSTITUENCY WISHED TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT OR THE INTERVENER THERE CAN BE LITTLE DOUBT THAT THE EMPLOYEES CONCERNED, IN ARRIVING AT THEIR DECISION, WOULD LIKELY TAKE INTO CONSIDERATION, AMONG OTHER FACTORS, THE FACT THAT IF THEY CHOSE TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT, THIS CHOICE WOULD NECESSARILY RESULT IN THEIR BEING INCLUDED IN A BARGAINING UNIT WHICH WOULD BE SEPARATE FROM THE ALL ONTARIO BARGAINING UNIT CURRENTLY REPRESENTED BY THE INTERVENER. IT IS READILY APPARENT THAT IF THE APPROPRIATENESS OF THE PROPOSED BARGAINING UNIT WAS THE ONLY FACTOR TO BE CONSIDERED IN A REPRESENTATION VOTE, THE RESULT OF THE VOTE WOULD HAVE MORE EVIDENTIARY VALUE AS TO THE WISHES OF THE EMPLOYEES WITH RESPECT TO THE APPROPRIATENESS OF THE BARGAINING UNIT. HOWEVER THAT MAY BE, SECTION 8(4) OF THE ACT PROVIDES THAT THE BOARD SHALL DETERMINE THE UNIT OF EMPLOYEES THAT IS APPROPRIATE FOR COLLECTIVE BARGAINING AFTER A REPRESENTATION VOTE HAS BEEN TAKEN UNDER SECTION 8 (2) OF THE ACT. THE BOARD MUST MAKE ITS DETERMINATION WITH RESPECT TO THE APPROPRIATENESS OF THE BARGAINING UNIT PURSUANT TO THE PROVISIONS OF SECTION 6(1) OF THE ACT. SINCE THE BOARD IS ANXIOUS TO CONSIDER ALL AVAILABLE EVIDENCE, NO MATTER WHAT WEIGHT IT MIGHT HAVE, BEFORE ARRIVING AT ITS DECISION AS TO THE APPROPRIATENESS OF THE BARGAINING UNIT PROPOSED BY THE APPLICANT, THE BOARD "IS OF OPINION THAT IT WOULD BE DESIROUS TO ASCERTAIN THE WISHES OF THE EMPLOYEES AS INDICATED IN THE PRE-HEARING REPRESENTATION VOTE IN ORDER TO ASSIST THE BOARD."

6. THE INTERVENER HAS NOT ALLEGED THAT NEW EVIDENCE IS NOW AVAILABLE WHICH WAS NOT AVAILABLE TO THE PARTIES AT THE HEARING IN THIS MATTER. AS STATED IN ITS LETTER OF MAY 21ST, THE INTERVENER "REQUESTS AN OPPORTUNITY TO PRESENT DETAILED ARGUMENT TO THE BOARD AT A HEARING HELD FOR THAT PURPOSE IN SUPPORT OF ITS APPLICATION HEREIN FOR RECONSIDERATION." THE BASIS OF THE INTERVENER'S REQUEST IN THIS MATTER IS THAT THE INTERVENER SEEKS A FURTHER OPPORTUNITY TO ARGUE THE MERITS OF THE CASE.

7. SINCE ALL THE PARTIES WERE GIVEN FULL OPPORTUNITY TO PRESENT WHATEVER ARGUMENT WAS AVAILABLE TO THEM AT THE HEARING IN THIS MATTER, THE BOARD DOES NOT DEEM IT ADVISABLE TO GIVE THE PARTIES A FURTHER OPPORTUNITY TO PRESENT ADDITIONAL ARGUMENT IN THIS CASE.

8. THE BOARD ACCORDINGLY DOES NOT CONSIDER IT ADVISABLE TO RECONSIDER, VARY OR REVOKE ITS DECISION OF MAY 15TH, 1969, IN THIS MATTER.

9. THE INTERVENER'S REQUEST IS THEREFORE DENIED.
10. THE BOARD ACCORDINGLY DIRECTS THE REGISTRAR TO PROCEED WITH THE COUNTING OF THE BALLOTS AS DIRECTED IN ITS DECISION OF MAY 15TH, 1969, IN ORDER THAT THE BOARD MAY BE IN A POSITION TO DEAL WITH THE OUTSTANDING ISSUES.

DECISION OF BOARD MEMBER E. BOYER: JUNE 11, 1969.

I DISSENT. THE VOTE IN THIS MATTER WAS HELD UNDER SECTION 8 OF THE ACT FOR THE PURPOSE OF DETERMINING REPRESENTATION AND THE EMPLOYEES PUT THEIR MIND TO THAT ISSUE. IT MAY VERY WELL BE THAT HAD THE VOTE BEEN FOR THE PURPOSE OF THE APPROPRIATENESS OF THE BARGAINING UNIT UNDER SECTION 6(1), THE EMPLOYEES MAY HAVE CAST THEIR BALLOTS IN A DIFFERENT MANNER. I WOULD THEREFORE DIRECT A REPRESENTATION VOTE TO ASCERTAIN THE WISHES OF THE EMPLOYEES WITH RESPECT TO THE APPROPRIATENESS OF THE BARGAINING UNIT PURSUANT TO THE PROVISIONS OF SECTION 6(1) OF THE ACT.

INDEXED ENDORSEMENT - RECONSIDERATION OF BOARD'S DECISION -

TERMINATION

14937-68-R: JAMES MOIR (APPLICANT) v. BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 415 (RESPONDENT) v. GORMAN ECKERT AND COMPANY LIMITED (INTERVENER) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
H.F. IRWIN AND O. HODGES.

DECISION OF THE BOARD: JUNE 4, 1969.

1. THE BOARD RECEIVED A REQUEST FROM THE APPLICANT TO RE-CONSIDER ITS DECISION IN THIS MATTER DATED APRIL 8TH, 1969. THE BOARD HAS CAREFULLY CONSIDERED THE REPRESENTATIONS OF THE SOLICITORS FOR THE PARTIES INVOLVED IN THIS RESPECT.

2. WHILE RECOGNIZING THAT THERE IS CONSIDERABLE DIVERGENCE OF OPINION AS TO THE INTERPRETATION AND APPLICATION OF SECTION 43 OF THE LABOUR RELATIONS ACT WE HAVE ACCORDED TO THIS APPLICATION THE CONSISTENT PRACTICE OF THE BOARD IN ITS DETERMINATION IN ANY APPLICATION UNDER THIS SECTION OF THE ACT WHETHER NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY A TRADE UNION. REVOCATIONS HAVE, SUBJECT TO THE PROPER PROOF THEREOF, BEEN ACCEPTED BY THE BOARD IN EFFECTIVELY

REDUCING THE NUMBERS OF PERSONS WHO SIGN A PETITION IN SUPPORT OF SUCH AN APPLICATION IN DETERMINING THE EXACT PERCENTAGE OF THE EMPLOYEES INVOLVED BEFORE FINDING WHETHER OR NOT THE APPLICANT HAS SUFFICIENT VOLUNTARY SUPPORT TO GIVE JURISDICTION TO THE BOARD TO GRANT THE RELIEF REQUESTED. THIS PRINCIPLE IS NOT ACCEPTED BY BOARD MEMBER IRWIN AS HE HAS STATED IN HIS DISSENT, NOR BY THE APPLICANT, HOWEVER THIS IS A MATTER THAT WAS IN ISSUE AND ARGUED AT THE HEARING AND DEALT WITH BY THE BOARD IN ITS DECISION.

3. THE REMAINDER OF THE APPLICANT'S REQUEST FOR REVIEW DEALS WITH THE EVIDENCE WHICH WAS PLACED BEFORE THE BOARD FOR ITS CONSIDERATION AND URGES IN CERTAIN AREAS A DIFFERENT INTERPRETATION THAN THAT ARRIVED AT BY THE BOARD. WHILE RESPECTING THE OPINIONS OF THE PARTIES TO THESE PROCEEDINGS, IT IS FOR THE BOARD IN THE EXERCISE OF ITS JURISDICTION TO MAKE ITS FINDINGS ON THE EVIDENCE PLACED BEFORE IT. IT IS NOT NECESSARY TO DEAL SERIATUM WITH THE OBJECTIONS THAT THE APPLICANT HAS TO THE DECISION, ALL THE MATTERS WERE RAISED AT THE HEARING AND THE BOARD CONSIDERED THE ABLE SUBMISSIONS OF ALL COUNSEL AS TO THE INTERPRETATION IT SHOULD MAKE OF THE EVIDENCE AND THE APPLICATION OF SECTION 43. WHETHER THE MAJORITY OF THE BOARD DREW THE WRONG INFERENCE FROM THE EVIDENCE OF MRS. BAKER THAT SHE WAS NOT A UNION MEMBER, MADE NO DIFFERENCE IN THE WEIGHT ACCORDED TO HER TESTIMONY AS SET OUT IN THE DECISION. IN SO FAR AS THE ASSESSMENT OF THE CREDIBILITY OF CERTAIN WITNESSES, THE BOARD TOOK INTO CONSIDERATION VARIOUS FACTORS AND ALL OF THEIR EVIDENCE AND ALTHOUGH NOT NECESSARILY RECITING EACH AND EVERY PARTICULAR PART OF THE TESTIMONY BEFORE US IN THE DECISION, ALL SUCH MATTERS WERE CONSIDERED BY THE BOARD.

4. THE APPLICANT HAS NOT RAISED ANY MATTERS OR EVIDENCE NOT CONSIDERED BY IT PRIOR TO MAKING ITS DECISION ON THE APPLICATION AND THE BOARD DOES NOT DEEM IT NECESSARY OR ADVISABLE TO VARY, AMEND OR REVOKE ITS DECISION DATED APRIL 8TH, 1969.

5. THE REQUEST OF THE APPLICANT IS THEREFORE DENIED.

INDEXED ENDORSEMENT - RECONSIDERATION OF BOARD'S DECISION -

PROSECUTION

15382-68-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW (APPLICANT) v. NORTH AMERICAN PLASTICS CO. LIMITED, MICHAEL LADNEY, WILLIAM LATHAM, PETER EMANUEL AND FRANK CORCORAN (RESPONDENTS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND H.F. IRWIN.

DECISION OF O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBER
O. HODGES: JUNE 18, 1969.

1. ON APRIL 16, 1969, SUBSEQUENT TO THE BOARD GRANTING A CONSENT TO THE INSTITUTION OF A PROSECUTION IN THIS MATTER, THE APPLICANT REQUESTED THAT THE MAJORITY GIVE REASONS FOR THE GRANTING OF CONSENT. THE APPLICANT INDICATED IT WAS ITS UNDERSTANDING OF BOARD'S POLICY THAT ON THE GRANTING OF CONSENT TO THE INSTITUTION OF PROSECUTION THAT REASONS, WHETHER IN DISSENT OR OTHERWISE, ARE GENERALLY NOT GIVEN.

2. IN LOCAL 299, HOTEL AND CLUB EMPLOYEES' UNION, AFL-CIO-CLC, OF THE HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION V. CANADIAN PACIFIC RAILWAY COMPANY, 1961 SEPT. OLRB MTHLY. REP. 214, THE BOARD SAID:

"IN GRANTING LEAVE TO INSTITUTE A PROSECUTION, THE BOARD SELDOM GIVES REASONS FOR ITS DECISION. THE REASON FOR THIS PRACTICE IS THE DANGER THAT SUCH REASONS WILL BE INTERPRETED AS AN EXPRESSION OF OPINION BY THE BOARD ON THE MERITS OF THE PROSECUTION ITSELF."

A REVIEW OF THE BOARD'S CASES INDICATES, THAT WHILE IT IS NOT USUAL FOR THE BOARD TO GIVE REASONS WHEN IT GRANTS CONSENT, THERE HAVE BEEN SOME CASES WHERE REASONS HAVE BEEN GIVEN BOTH FOR THE MAJORITY AND BY WAY OF DISSENT.

3. IN VIEW OF THE NATURE OF THESE PROCEEDINGS AND IN VIEW OF THE FACT THAT THE RESPONDENT DID NOT PRESENT ANY EVIDENCE, WE DO NOT FEEL THAT IT IS NECESSARY TO GIVE REASONS. NEEDLESS TO SAY WE WERE NOT OF THE SAME VIEW AS BOARD MEMBER H.F. IRWIN WHO DISSENDED, AND IT WAS OUR OPINION, REFLECTED IN THE GRANTING OF CONSENT, THAT THERE WERE SUFFICIENT ISSUES RAISED BY THE APPLICANT WHICH WERE NOT VEXATIOUS AND WHICH A MAGISTRATE COULD CONSIDER.

EXCERPT FROM DECISION IN CONSTRUCTION INDUSTRY CASE

16328-69-R: BRICKLAYERS, MASONS AND PLASTERERS' INTERNATIONAL UNION OF AMERICA, LOCAL NO. 12 (APPLICANT) V. STRADWICKS TILE COMPANY LTD. (RESPONDENT).

6. THE APPLICANT IS REQUESTING A "AT OR OUT OF GUELPH" UNIT AS OPPOSED TO ONE COVERING THE GEOGRAPHIC AREA IN WHICH

THE JOB-SITE IS LOCATED AND RELIES ON THE ALVIN TILE COMPANY LIMITED CASE (BOARD FILE No. 6050-63-R). HOWEVER THE UNIT IN THAT CASE WAS BASED ON THE FACT THAT THERE WAS A DISPLACEMENT OF AN INDUSTRIAL UNION BY THE APPLICANT. THAT SITUATION DOES NOT EXIST HERE AND WE ARE THEREFORE NOT PREPARED TO DEPART FROM OUR USUAL PRACTICE OF CERTIFYING ON A GEOGRAPHIC AREA BASIS. ACCORDINGLY, THE BOARD FURTHER FINDS THAT ALL MARBLE, TILE AND TERRAZZO MECHANICS AND THEIR APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WELLINGTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

(JUNE 26, 1969).

STATISTICAL TABLES FOR FIRST 3 MONTHS (APRIL - JUNE) FISCAL YEAR 1969-70

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED	
	1ST 3 MONTHS OF FISCAL YEAR 1969-70	1968-69
I. CERTIFICATION	298	271
II. DECLARATION TERMINATING BARGAINING RIGHTS	16	9
III. DECLARATION OF SUCCESSOR STATUS	5	8
IV. DECLARATION THAT STRIKE UNLAWFUL	22	14
V. DECLARATION THAT LOCKOUT UNLAWFUL	1	3
VI. CONSENT TO PROSECUTE	38	21
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	39	63
VIII. MISCELLANEOUS	22	22
TOTAL	<u>441</u>	<u>411</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER	
	1ST 3 MONTHS OF FISCAL YEAR 1969-70	1968-69
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	332	290

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY MAJOR TYPES

	NUMBER DISPOSED OF	
	1ST 3 MONTHS OF FISCAL YR.	1968-69
I. CERTIFICATION	275	268
II. DECLARATION TERMINATING BARGAINING RIGHTS	13	12
III. DECLARATION OF SUCCESSOR STATUS	17	8
IV. DECLARATION THAT STRIKE UNLAWFUL	20	14
V. DECLARATION THAT LOCKOUT UNLAWFUL	1	3
VI. CONSENT TO PROSECUTE	40	25
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	44	59
VIII. MISCELLANEOUS	33	18
TOTAL	<u>443</u>	<u>407</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD
BY TYPE AND DISPOSITION

I. CERTIFICATION	NUMBER OF APPLICATIONS		NUMBER OF EMPLOYEES*	
	1ST 3 MONTHS FISCAL YR.			
	1969-70	1968-69	1969-70	1968-69

GRANTED	185	172	8187	7069
DISMISSED	57	68	1910	1746
WITHDRAWN	<u>33</u>	<u>28</u>	<u>565</u>	<u>797</u>
TOTAL	<u>275</u>	<u>268</u>	<u>10662</u>	<u>9612</u>

II. TERMINATION
OF BARGAINING
RIGHTS

GRANTED	6	6	331	159
DISMISSED	7	5	106	41
WITHDRAWN	<u>—</u>	<u>1</u>	<u>18</u>	<u>19</u>
TOTAL	<u>13</u>	<u>12</u>	<u>455</u>	<u>219</u>

*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY
TYPE AND DISPOSITION (CONTINUED)

NUMBER OF APPLICATIONS	
1ST 3 MONTHS FISCAL YR.	
1969-70	1968-69

III. DECLARATION THAT STRIKE
UNLAWFUL

GRANTED	1	1
DISMISSED	5	2
WITHDRAWN	<u>14</u>	<u>11</u>
TOTAL	<u>20</u>	<u>14</u>

IV. DECLARATION THAT LOCK-
OUT UNLAWFUL

GRANTED	-	-
DISMISSED	-	1
WITHDRAWN	<u>1</u>	<u>2</u>
TOTAL	<u>1</u>	<u>3</u>

V. CONSENT TO PROSECUTE

GRANTED	15	5
DISMISSED	4	7
WITHDRAWN	<u>21</u>	<u>13</u>
TOTAL	<u>40</u>	<u>25</u>

VI. COMPLAINT OF UNFAIR
PRACTICE IN EMPLOYMENT
(SECTION 65)

GRANTED	8	1
DISMISSED	7	18
WITHDRAWN	<u>29</u>	<u>40</u>
TOTAL	<u>44</u>	<u>59</u>

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF BY
THE ONTARIO LABOUR RELATIONS BOARD

		NUMBER OF VOTES
		1ST 3 MTHS FISCAL YR.
		1969-70 1968-69

CERTIFICATION AFTER VOTE*

PRE-HEARING VOTE	10	7
POST-HEARING VOTE	4	10
BALLOTS NOT COUNTED	-	-

DISMISSED AFTER VOTE

PRE-HEARING VOTE	3	2
POST-HEARING VOTE	13	8
BALLOTS NOT COUNTED	-	-
TOTAL	<u>30</u>	<u>27</u>

*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH
APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER
APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY
THE ONTARIO LABOUR RELATIONS BOARD

		NUMBER OF VOTES
		1ST 3 MTHS FISCAL YR.
		1969-70 1968-69

*RESPONDENT UNION SUCCESSFUL	-	-
RESPONDENT UNION UNSUCCESSFUL	<u>3</u>	<u>4</u>
TOTAL	<u>3</u>	<u>4</u>

*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP
OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

BINDING SECT. APR 7 1972

